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INTERSTATE COMMERCE COMMISSION

WESTERN PACIFIC RAILROAD
EQUIPMENT TRUST NO. 1

EQUIPMENT TRUST AGREEMENT

Dated as of
June 15, 1971

Between

CROCKER-CITIZENS NATIONAL BANK
San Francisco, California

Trustor

And

FIRST WESTERN BANK AND TRUST COMPANY
San Francisco, California

Trustee

EQUIPMENT TRUST AGREEMENT

THIS IS AN AGREEMENT, dated as of June 15, 1971, between CROCKER-CITIZENS NATIONAL BANK, of San Francisco, California (the Trustor) and FIRST WESTERN BANK AND TRUST COMPANY, of San Francisco, California (the Trustee).

ARTICLE I.

DEFINITIONS

SECTION 1.01. For all purposes of this Trust Agreement, the following terms shall have the following meanings:

(a) Certificate shall mean each Equipment Trust Certificate substantially in the form therefor set forth in Section 3.01 hereof, issued by the Trustee to a Certificate Purchaser pursuant to Article IV hereof, in the principal amount, bearing interest at the rate and payable as to principal and interest as provided in Section 3.01 hereof, and shall include any Certificate issued in exchange therefor or replacement thereof pursuant to Section 3.05 and 3.06 hereof.

(b) Certificate Holder shall mean each holder of a Certificate issued and outstanding pursuant to the terms of this Trust Agreement, as of the date of any determination of Certificate Holders.

(c) Certificate Purchasers shall mean the parties to the Equipment Trust Certificate Purchase Agreement who shall, pursuant to the terms thereof, purchase the original Certificates issued hereunder, namely: Lutheran Brotherhood, Minneapolis, Minnesota; State National Bank, Evanston, Illinois; Central Life Assurance Co., Des Moines, Iowa and American Mutual Life Insurance Co., Des Moines, Iowa.

(d) Equipment Trust Certificate Purchase Agreement shall mean the agreement so designated dated as of the date hereof and entered into concurrently with the execution and delivery of this Trust Agreement, between the Trustee and the Certificate Purchasers, in substantially the form of Exhibit B hereto, as such agreement may from time to time be supplemented or amended, or the terms thereof waived or modified, to the extent permitted by, and in accordance with, the terms of this Trust Agreement.

(e) Lease shall mean the Railroad Equipment Lease Agreement to be dated as of the date hereof and to be entered into by the Trustee and the Lessee concurrently with the execution and delivery of this Trust Agreement in substantially the form of Exhibit A hereto, as such agreement may from time to time be supplemented or amended, or the terms thereof waived or modified, to the extent permitted by, and in accordance with, the terms of this Trust Agreement. The term Lease shall also include each Lease Supplement from time to time entered into pursuant to the terms of the Lease.

(f) Lessee shall mean The Western Pacific Railroad Company, a California corporation, of San Francisco, California.

(g) Purchase Agreement shall mean the Railroad Equipment Purchase Agreement to be dated as of the date hereof and to be executed and delivered by the Lessee and the Trustee concurrently with the execution and delivery of this Trust Agreement in substantially the form of Exhibit C hereto, as such agreement may from time to time be supplemented or amended, or the terms thereof waived or modified, to the extent permitted by and in accordance with, the terms of this Trust Agreement.

(h) Reconstruction Agreement shall mean the Railroad Equipment Reconstruction Agreement between the Trustee, Railroad and Rebuilder to be dated as of the date hereof and entered into concurrently with the execution and delivery of this Trust Agreement, in substantially the form of Exhibit D hereto, as such agreement may from time to time be supplemented or amended, or the terms thereof waived or modified, to the extent permitted by, and in accordance with, the terms of this Trust Agreement.

(i) Equipment shall mean the railroad boxcars which are to be purchased by the Trustee from the Lessee pursuant to the Purchase Agreement, reconstructed by Rebuilder pursuant to the Reconstruction Agreement and leased to the Lessee pursuant to the Lease, all as more particularly described in the Lease.

(j) Requisite Parties as of a date of determination thereof shall mean (i) Certificate Holders holding more than 51% in aggregate unpaid principal amount of all Certificates, if any, outstanding as of such date, (or, if no Certificates are then outstanding but the Equipment Trust Certificate Purchase Agreement is then in effect, Certificate Purchasers who have committed thereunder to purchase more than 51% of the Certificates to be issued pursuant thereto), and (ii) the Trustor; provided, however, that during any period during which an Event of Default shall have occurred and be continuing, or during any period commencing 10 days after any payment of principal or of interest on any Certificate shall not have been paid when due for any reason and continuing thereafter until payment in full of any principal of and interest on any Certificates which shall be overdue, Requisite Parties shall mean the holders of more than 51% in aggregate unpaid principal amount of all Certificates outstanding as of the date of determination.

(k) Settlement Date shall mean each date as of which, under the terms of the Reconstruction Agreement, the Trustee is obligated to make payment to the Rebuilder for the reconstruction of units of Equipment.

(l) Rebuilder means Pacific Car and Foundry Company, a Washington corporation.

(m) Trust Estate shall mean all estate, right, title and interest of the Trustee in, to and under the Equipment, the Lease, the Purchase Agreement and the Reconstruction Agreement, including without limitation all of the following until the same are disbursed by the Trustee in accordance with the terms hereof : (i) all proceeds of the Certificates

defined in the Equipment Trust Certificate Purchase Agreement, (ii) all amounts of Basic Rent, Supplemental Rent, Casualty Value payments, and indemnity or other payments of any kind for or with respect to any Equipment and (iii) any and all payments or proceeds received by the Trustee after the termination of the Lease with respect to any Equipment as the result of the sale, lease or other disposition thereof.

SECTION 1.02, For all purposes of this Trust Agreement, the following terms shall have the meanings defined in the Lease: Basic Rent, Casualty, Casualty Occurrence, Casualty Value, Event of Default, Lease Supplement, Lessor's Cost, Rent, Supplemental Rent, and unit (or units) of Equipment.

ARTICLE II.

DIRECTION TO EXECUTE DOCUMENTS: DECLARATION OF TRUST

SECTION 2.01. The Trustor hereby authorizes and directs the Trustee to execute and deliver the Equipment Trust Certificate Purchase Agreement, the Purchase Agreement, the Reconstruction Agreement and the Lease and, subject to the terms of this Trust Agreement, to execute and deliver all such Certificates and other documents, pay and receive such funds, and take all such action as may be necessary, appropriate or convenient to consummate the transactions contemplated in this Trust Agreement and the other agreements referred to herein, and to carry out the terms thereof.

SECTION 2.02. The Trustee hereby declares that it will hold the Trust Estate upon the trusts hereinafter set forth, subject to, and in accordance with, the terms of Article V hereof, first, for the ratable use and benefit of the Certificate Holders and, second, for the use and benefit of the Trustor, all as more particularly set forth in said Article V. This Trust Agreement creates, for the ratable benefit of the Certificate Holders, a security interest in the Trust Estate to secure the prompt payment of the indebtedness evidenced by the Certificates and the performance and observance by the Trustee of all of the agreements, covenants and provisions herein and in the Certificates contained,

subject to the terms and conditions hereof. For convenience of reference, the trust created by this Trust Agreement may be referred to as the "Western Pacific Railroad Equipment Trust No. 1".

ARTICLE III.

THE CERTIFICATES

SECTION 3.01. The Certificates shall be substantially in the form set forth below:

EQUIPMENT TRUST CERTIFICATE
FIRST WESTERN BANK AND TRUST COMPANY

TRUSTEE UNDER EQUIPMENT TRUST AGREEMENT
DATED AS OF JUNE 15, 1971
(WESTERN PACIFIC RAILROAD
EQUIPMENT TRUST NO. 1)

\$ _____, 19____,
San Francisco, California

FIRST WESTERN BANK AND TRUST COMPANY, (the Trustee) as trustee under the Trust Agreement dated as of June 15, 1971, (the Trust Agreement), between CROCKER-CITIZENS NATIONAL BANK, of San Francisco, California (the Trustor) and the Trustee, hereby promises to pay to the order of _____ the principal sum of \$ _____, together with interest on the amount of said principal sum remaining unpaid from time to time from the date of this Certificate until payment in full of said principal sum at the rate of 8-3/4% per annum (computed on the basis of a 360-day year of twelve 30-day months), payable as follows: Accrued interest at the aforesaid rate computed on the aforesaid principal sum from the date hereof shall be payable on February 1, 1972; thereafter, 23 consecutive semi-annual level payments of principal and interest, commencing with August 1, 1972, and on the first day of each August and February thereafter until August 1, 1983, each in the amount of \$ _____, except that the last such payment shall be in an amount sufficient to discharge the

accrued interest on, and unpaid principal of, this Certificate. (All defined terms used in the Trust Agreement shall have the same meaning when used in this Certificate).

This Certificate, to the extent permitted by applicable law, shall bear interest at the rate of 10% per annum (computed as aforesaid) on any part of the principal or interest hereon not paid when due for any period during which the same shall be overdue.

All payment of principal and interest hereunder and under the Trust Agreement shall be made only from the income and proceeds from the Trust Estate and only to the extent that the Trustee shall have sufficient income or proceeds from the Trust Estate to make such payments in accordance with the terms of Article V of the Trust Agreement; and each holder hereof, by its acceptance of this Certificate, agrees that it will look solely to the income and proceeds from the Trust Estate to the extent available for distribution to the holder hereof as above provided and that neither the Trustor nor the Trustee are personally liable to the holder hereof for any amounts payable under this Certificate or the Trust Agreement.

Principal and interest shall be payable at the principal corporate trust office of the Trustee in San Francisco, California or at the office of any successor trustee, in lawful money of the United States of America.

Each holder hereof by its acceptance of this Certificate agrees that, except as otherwise provided in Section 5.02(d) of the Trust Agreement and Section 3.02 of the Equipment Trust Certificate Purchase Agreement, each level payment and any other payments received by it hereunder shall be applied, first, to the payment of accrued interest on this Certificate (including any interest on overdue principal or interest) to the date of such payment, second, to the payment of the principal amount of this Certificate then due and third, the balance, if any, remaining thereafter, to the payment of the principal amount of this Certificate remaining unpaid.

This Certificate is one of the Certificates referred to in the Trust Agreement, which have been or are to be issued by the Trustee pursuant to the terms of the Trust Agreement. The beneficial interest of the Trustor in and to the Trust Estate is subject to the rights of the holders of the Certificates to the extent provided in the Trust Agreement. Reference is hereby made to the Trust Agreement for a statement of the rights of the holder of this Certificate and of the rights of the holders of the other Certificates, a statement of the conditions upon which the maturity hereof may be accelerated, a description of the security for the payment of this Certificate, as well as for a statement of the terms and conditions of the trust created by the Trust Agreement, to all of which terms and conditions each holder hereof agrees by its acceptance of this Certificate.

This Certificate is not subject to prepayment except as provided in Sections 3.02, 5.02(b) and (c) and 11.01 of the Trust Agreement. Reference is hereby made to Section 3.02 of the Trust Agreement for a statement of the terms upon which the level installments hereon shall be reduced in the event of any such prepayment.

IN WITNESS WHEREOF, the Trustee has caused this Certificate to be duly executed on its behalf by an authorized officer as of the date first above written.

FIRST WESTERN BANK AND TRUST
COMPANY, Trustee under the
Western Pacific Railroad
Equipment Trust No. 1

By _____
Authorized Officer

SECTION 3.02. Each Certificate shall be issued by the Trustee in accordance with the terms of this Trust Agreement and the Equipment Trust Certificate Purchase Agreement, and shall be payable in accordance with, and subject to the terms and conditions set forth in, the form of Certificate set forth in Section 3.01 hereof, the other provisions of this Trust Agreement, and the Equipment Trust Certificate Purchase Agreement. Upon any payment to the Certificate Holders pursuant to Section 5.02(b) (relating to Casualty Value payments),

or pursuant to Section 3.02 of the Equipment Trust Certificate Purchase Agreement (relating to the repayment of excess funds not used for the payment of Lessor's Cost), the level payments thereafter due on each Certificate shall be recalculated and reduced so that such payments will amortize the then remaining principal balance on such Certificate, plus interest thereon, in approximately equal installments in such number as there are level installment payment dates then remaining, provided that the last of such installments shall in any event be in an amount sufficient to discharge the accrued interest on, and unpaid principal of, such Certificate. Upon or promptly after the distribution of any such payment, the Trustee shall advise each Certificate Holder in writing of the amount of each such recalculated level installment payment amount applicable to each Certificate held by such Certificate Holder (but the failure to give such advice shall not affect the foregoing provisions). Upon presentment to the Trustee of any outstanding Certificate following any such payment, under any provisions of this Trust, the Trustee shall make appropriate notations thereon showing such payment and such recalculated level installment payments.

SECTION 3.03. Notwithstanding any provision herein or in any Certificate to the contrary, the Trustee will pay, if so requested by any Certificate Holder by written notice to the Trustee, all amounts payable by the Trustee to any such holder who is a Certificate Purchaser or a designee or nominee thereof (including all amounts distributed pursuant to Article V of this Trust Agreement) either (i) by crediting the amount to be distributed to such holder to the account maintained by such holder with the Trustee or (ii) by mailing a check payable in clearing house funds to such holder at such address as such holder shall have specified in such notice, such mailing to be made promptly and in any event within five business days after receipt by the Trustee of the funds with which such payment is to be made, in either case without any presentment or surrender of any Certificate, except that in the case of the final payment in respect of any Certificate, such Certificate shall be surrendered to the Trustee. The Trustee may deem and treat the person in whose name any certificate shall have been issued by the Trustee as the absolute owner and holder of such Certificate for the purpose of receiving payment of all amounts payable by the Trustee with

respect to such Certificate and for all other purposes, and the Trustee shall not be affected by any notice to the contrary.

SECTION 3.04. A Certificate Holder shall have no further beneficial interest in, or other right with respect to, the Trust Estate when and if the principal of and interest and premium (if any) on all Certificates held by such holder and all other sums payable to such holder hereunder, under the Equipment Trust Certificate Purchase Agreement or under such Certificates shall have been paid in full.

SECTION 3.05. The Trustee shall maintain a register for the purpose of registering transfers and exchanges of Certificates. A Certificate Holder intending to transfer any or all of the Certificates held by such holder to a new payee shall surrender such Certificate or Certificates to the Trustee at its principal corporate trust office at San Francisco, California, or at the office of any successor trustee, together with a duly executed instrument of assignment from such holder, specifying the name and address of the payee or payees. Promptly upon receipt of such documents the Trustee will issue a new Certificate or Certificates of the same type, in the same aggregate original face amount, dated the same date or dates and in such denomination or denominations and payable to the order of such payee or payees as shall be specified in the written request from such holder. The Trustee shall make a notation on each new Certificate of the amount of all payments or prepayments of principal previously made on the old Certificate or Certificates with respect to which such new Certificate or Certificates is issued and the date to which interest on such old Certificate or Certificates has been paid. The Trustee shall not be required to exchange any surrendered Certificates as above provided during the ten-day period preceding the due date of any payment on such Certificate.

SECTION 3.06. If any Certificate shall become mutilated, destroyed, lost or stolen, the Trustee shall, upon the written request of the holder of such Certificate, execute and deliver in replacement thereof a new Certificate in the same original face amount, dated the same date as the Certificate so mutilated, destroyed, lost or stolen. If the Certificate being replaced has become mutilated, such Certificate shall be surrendered to the Trustee. If the Certificate being

replaced has been destroyed, lost or stolen the holder of such Certificate shall furnish to the Trustee such security or indemnity as may be required by it to save the Trustee harmless and evidence satisfactory to the Trustee of the destruction, loss or theft of such Certificate and of the ownership thereof.

SECTION 3.07. Upon the issuance of a new Certificate or Certificates pursuant to Section 3.05 or 3.06 hereof, the Trustee may require the payment of a sum to reimburse it for, or to provide funds for, the payment of any tax or other governmental charge or any charges and expenses connected therewith paid or payable by the Trustee.

ARTICLE IV.

CONSUMMATION OF TRANSACTIONS BY TRUSTEE AND TRUSTOR

SECTION 4.01. The Trustee agrees that it will, subject to the terms and conditions hereof and of the other agreements herein referred to and the Trustor authorizes and directs the Trustee to:

(a) Execute the documents referred to in Section 2.01 hereof, and take all steps necessary to consummate the transactions therein and herein contemplated, (including, without limitation, the conveyance to the Lessee of the title to any units of Equipment which do not become subject to the Lease and for which no payment of Lessor's Cost is made by the Trustee, and the payment to the Certificate Holders of any sum not disbursed for the Lessor's Cost of such unit of Equipment, as contemplated by the Purchase Agreement, the Reconstruction Agreement and the Equipment Trust Certificate Purchase Agreement).

(b) Authorize a representative of the Trustee (who may be an employee of the Lessee) to accept delivery of the Equipment from the Lessee pursuant to the Purchase Agreement, and the reconstructed Equipment from Rebuilder pursuant to the Reconstruction Agreement.

(c) On the date specified in the Equipment Trust Certificate Purchase Agreement issue and sell to the Certificate Purchasers the Certificates in accordance with the terms thereof and retain and/or invest the proceeds received therefrom until same are either (i) required for the payment of the Lessor's Cost of units of Equipment as provided in paragraph (d) below, or (ii) returned to the Certificate Purchasers as required by the Equipment Trust Certificate Purchase Agreement.

(d) With the funds received by the Trustee from the issuance of Certificates as provided in paragraph (c) above, together with the funds received from the Trustor in accordance with Section 4.02 below, make payments as follows:

(i) To the Lessee, the aggregate amount due to the Lessee for Equipment under the Purchase Agreement; and

(ii) To Rebuilder, on each Settlement Date, the aggregate amount then due under the Reconstruction Agreement.

(e) Promptly furnish to the Trustor copies of all of the documents which the Trustee is required to furnish to the Certificate Purchasers under the Equipment Trust Certificate Purchase Agreement.

(f) Receive rent and all other sums paid by the Lessee under the Lease, and the proceeds of the sale or other disposition of any Equipment, and distribute the same in accordance with the provisions of Article V hereof.

(g) Prepare and submit to the Trustor for the Trustor's approval all appropriate tax returns for this Trust, and prepare such statements and reports concerning the Equipment, the Lease, or this Trust from facts actually known to the Trustee, as the Trustor may from time to time request.

(h) Promptly pay to the Certificate Holders when due all sums actually received by the Trustee so as to avoid, to the extent the same is within the control of the Trustee, any default by this Trust under the terms hereof or of the Equipment Trust Certificate Purchase Agreement.

(i) Promptly remit to the Trustor any refund of the Purchase Price received by the Trustee from the Lessee under the terms of the Purchase Agreement.

SECTION 4.02 The Trustor agrees that it will furnish to the Trustee in immediately available San Francisco funds, on each date on which payment of the purchase price is due to the Lessee under the Purchase Agreement, the amount then so due, up to an aggregate of \$600,000, which shall be promptly used by the Trustee for the payment of the purchase price under the Purchase Agreement.

The Trustor further agrees that on each Settlement Date, it shall furnish to the Trustee in immediately available San Francisco funds, a sum equal to the amount, if any, by which 20% of the Lessor's Cost of each unit of Equipment for which payment is due to the Rebuilder on such date shall be more than \$3,000.00; and the Trustee shall remit to the Trustor on each such date (out of the Proceeds held by it as defined in the Equipment Trust Certificate Purchase Agreement) the amount, if any, by which 20% of the Lessor's Cost of each such Unit shall be less than \$3,000.00. The Trustor shall also furnish to the Trustee and the Certificate Purchasers the opinion of counsel for the Trustor referred to in Section 2.01(c)(iii) of the Equipment Trust Certificate Purchase Agreement.

ARTICLE V.

SECURITY INTEREST IN TRUST ESTATE: DISTRIBUTION OF RENTS AND OTHER PROCEEDS

SECTION 5.01. The Trustee hereby grants a security interest in the Trust Estate (other than tax indemnity payments referred to in Section 14(b) of the Lease and other than the refund payments to the Trustor described in Sections 4.01(i) and 4.02 hereof) and any and all proceeds thereof, to secure ratably the payment of all Certificates and all other sums due or to become due to the Certificate Holders under the terms hereof, of the Equipment Trust Certificate Purchase Agreement, or of the Lease, it being the intent hereof that all of the Trust Estate (other than tax indemnity payments referred to in Section 14(b) of the Lease and other than the refund payments to the Trustor described in Sections 4.01(i) and 4.02 hereof) at any time coming into the possession or control of the Trustee shall be held,

first for the ratable benefit of the Certificate Holders and, second, for the benefit of the Trustor; provided, however, that such security interest is subject to the rights and interests of the Lessee under the Lease, and the Purchase Agreement, and the rights and interests of the Lessee and Rebuilder under the Reconstruction Agreement. The Trustee shall, as requested by any Certificate Holder in writing (subject to the provisions of Section 6.03 hereof), file or record, or cause to be filed or recorded, this Trust Agreement, the Lease (and each Lease Supplement thereto) and all additional financing statements, continuation statements and other documents, in such places and in such manner, and shall execute, deliver, file and record all such additional documents, all as may be required fully to preserve, protect and perfect the rights of the Certificate Holders with respect to the security interest in the Trust Estate granted herein.

SECTION 5.02. The Trustee shall collect and receive all Rents payable under the Lease, together with all sums realized from any source with respect to the Equipment, and shall distribute the same in accordance with the following:

(a) Except as otherwise provided in paragraph (c) hereof, each payment of Basic Rent under the Lease received by the Trustee at any time shall be distributed by the Trustee on the date such payment is received, in the following order of priority: first, so much of such payment as shall be required to pay in full the aggregate amount of the installment payments of principal and interest (as well as any interest on overdue principal or interest) then due under all Certificates shall be distributed to the Certificate Holders; and, second, the balance, if any, of such payment remaining thereafter shall be distributed to the Trustor. The portion of each such payment distributed to a Certificate Holder shall be applied by such holder in payment of the Certificates held by such holder, pro rata.

(b) Except as otherwise provided in paragraph (c) hereof, any payment received by the Trustee from the Lessee pursuant to Section 15 of the Lease as a result of a Casualty shall be distributed in the following order of priority: first, so much of such payment as

shall be equal to the unpaid principal balance of, plus accrued interest on, the portion of the then outstanding Certificates which represent indebtedness to finance 80% of the Lessor's Cost of the unit or units of Equipment suffering such Casualty, shall be paid to the Certificate Holders; second, the balance of such payment remaining thereafter shall be distributed to the Trustor. The portion of each such payment distributed to each Certificate Holder pursuant thereto shall be applied by such holder in payment of the Certificates held by such holder, pro rata.

(c) All payments received and amounts realized by the Trustee after the Trustee shall have declared the Lease to be in default pursuant to Section 17 thereof upon the occurrence of an Event of Default (including any amounts realized from the exercise of any remedies pursuant to Section 17 of the Lease) as well as all payments or amounts then held or thereafter received by the Trustee while such declaration remains in effect, shall be distributed by the Trustee in the following order of priority: first, so much of such payments or amounts as shall be required to reimburse the Trustee for expenses incurred in collecting or distributing such sums (to the extent not previously reimbursed or paid) shall be distributed to the Trustee; second, so much of such payment or amounts as shall be required to pay in full the aggregate unpaid principal amount of all Certificates then outstanding, plus the accrued but unpaid interest thereon to the date of distribution, shall be distributed to the Certificate Holders; and third, the balance, if any, of such payments or amounts remaining thereafter shall be distributed to the Trustor. The portion of each such payment or amount distributed to each Certificate Holder pursuant thereto shall be applied by such holder in payment of the Certificates held by such holder, pro rata.

(d) Any payments received by the Trustee pursuant to Section 12, 14(a) or 22 of the Lease, constituting reimbursement by the Lessee of its obligations for ancillary expenses under the Lease or payment of certain

taxes, fees and charges shall be distributed to the parties who originally advanced the funds for such expenses, or who are entitled to be indemnified thereunder, as the case may be.

(e) Any payments received by the Trustee pursuant to Section 14(b) of the Lease, any refund of the purchase price received by the Trustee under the Purchase Agreement, any sums due the Trustor under Section 4.02, and any payments received by the Trustee after payment in full of the Certificates, shall be distributed to the Trustor.

SECTION 5.03. Whenever a distribution is required to be made to the Certificate Holders under this Trust Agreement, (except as provided in Section 5.02(d)) such payment shall be made to all Certificate Holders ratably, without priority one over the other, in the proportion that the unpaid balance of principal plus accrued interest on the Certificates then held by each such holder bears to the unpaid balance of principal plus accrued interest on all Certificates, as of the date of distribution.

ARTICLE VI

DUTIES OF THE TRUSTEE

SECTION 6.01. In the event the Trustee shall have knowledge of an Event of Default, the Trustee shall give prompt written notice of such Event of Default to the Trustor and to each Certificate Holder by first class registered or certified mail, postage prepaid, unless such Event of Default shall have been remedied before the giving of such notice. Subject to the terms of Section 6.03 hereof, the Trustee shall take such action with respect to such Event of Default as the Trustee shall be directed in writing by the Requisite Parties. If the Trustee shall not have received instructions as above provided within 20 days after mailing notice of such Event of Default, the Trustee may, until it shall have received such instruction, take such action, or refrain from taking such action, with respect to such Event of Default as it shall deem advisable in the best interests of the Certificate Holders, or the Trustor if all Certificates have then been paid in full. In the event the Trustee shall at any time declare the Lease to be in default pursuant to Section 17 thereof, the unpaid principal amount of all Certificates then outstanding with accrued interest thereon

shall immediately become due and payable without further act or notice of any kind. For all purposes of this Trust Agreement, in the absence of actual knowledge, the Trustee shall not be deemed to have knowledge of an Event of Default unless notified in writing by the Lessee or one or more Certificate Holders or the Trustor, except that the Trustee shall be deemed to have knowledge of any Event of Default caused by the failure of the Lessee to make any payment of Basic Rent within five (5) days after the same shall become due.

SECTION 6.02. Subject to the terms of Section 6.03 hereof, the Trustee shall, upon the written instructions at any time and from time to time of the Requisite Parties, take such of the following actions as may be specified in such instructions:

(i) Take such action as the Requisite Parties shall specify in writing with respect to the option in the Reconstruction Agreement to accept or reject reconstructed units of Equipment which are not delivered within the time specified therein;

(ii) give such notice or direction or exercise such right or power under the Lease, the Purchase Agreement or the Reconstruction Agreement as shall be specified in such instructions, or take such other action (including, without limitation, such action to preserve or protect the Trust Estate (including the discharge of liens or encumbrances) as the Lessee shall not be required to take in accordance with the terms of the Lease) as shall be specified in such instructions;

(iii) approve as satisfactory to it all matters required by the terms of the Lease to be satisfactory to it, it being understood that without the written instructions of the Requisite Parties the Trustee shall not approve any such matter as satisfactory to it; and

(iv) subject to Section 19 of the Lease, after

the expiration or earlier termination of the Lease with respect to any Equipment, convey all the Trustee's right, title and interest in and to such Equipment for such amount, on such terms and to such purchaser or purchasers as shall be designated in such instructions, or lease or otherwise dispose of such Equipment on such terms as shall be designated in such instructions.

SECTION 6.03. The Trustee shall not be required to take any action under Sections 6.01, 6.02 or 5.01 hereof unless the Trustee shall have been indemnified by the party or parties giving such directions, in manner and form satisfactory to the Trustee, against any liability, cost or expense (including counsel fees) which may be incurred in connection with such action. The Trustee shall not be required to take any action under Sections 6.01, 6.02 or 5.01 hereof, nor shall any other provision of this Agreement be deemed to impose a duty on the Trustee to take any action, if the Trustee shall have been advised by counsel that such action is contrary to the terms of the Lease or other applicable agreement or is otherwise contrary to law.

SECTION 6.04. The Trustee shall have no duty or obligation to manage, control, use, sell, dispose or otherwise deal with any Equipment or any other part of the Trust Estate, or to otherwise take or refrain from taking any action under, or in connection with, the Lease, the Purchase Agreement, or the Reconstruction Agreement, or any action with respect to the Equipment except as expressly provided by the terms of this Trust Agreement or as expressly provided in written instructions pursuant to Section 6.01 or 6.02 hereof; and no implied duties or obligations shall be read into this Trust Agreement against the Trustee. The Trustee nevertheless agrees that it will, at its own cost and expense, promptly take such action as may be necessary to duly discharge any liens or encumbrances on any part of the Trust Estate which result from claims against the Trustee not related to the ownership of the Equipment or the administration of the Trust Estate.

SECTION 6.05. The Trustee agrees that it will not manage, control, use, sell, encumber, dispose or otherwise deal with any Equipment or any other part of the Trust Estate except

(a) as required by the terms of the Lease, the Purchase Agreement, the Reconstruction Agreement and the Equipment Trust Certificate Purchase Agreement, (b) in accordance with the powers granted to, or the authority conferred upon, the Trustee pursuant to this Trust Agreement or (c) in accordance with written instructions pursuant to Section 6.01 or 6.02 hereof.

ARTICLE VII

THE TRUSTEE

SECTION 7.01. The Trustee accepts the trust hereby created and agrees to perform the same but only upon the terms of this Trust Agreement. The Trustee shall not be answerable or accountable under any circumstances, except for its own wilful misconduct or gross negligence.

SECTION 7.02. Except in accordance with written instructions furnished pursuant to Section 5.01 hereof or Section 6.02 hereof, and without limitation of the generality of Section 6.04 hereof, the Trustee shall have no duty (i) to see to any registration of the Equipment or any recording or filing of the Lease or of this Trust Agreement, or to see to the maintenance of any such registration, recording or filing, (ii) to see to any insurance on the Equipment or to effect or maintain any such insurance, (iii) except as provided in Section 6.04 hereof, to see to the payment or discharge of any tax, assessment or other governmental charge or any lien or encumbrance of any kind owing with respect to, assessed or levied against, any part of the Trust Estate, (iv) to confirm or verify any financial statements of the Lessee or (v) to inspect the Equipment at any time or ascertain or inquire as to the performance or observance of any of the Lessee's covenants under the Lease or the Purchase Agreement or Rebuilder's covenants under the Reconstruction Agreement with respect to the Equipment. Notwithstanding the foregoing, the Trustee will furnish to each of the Certificate Purchasers, so long as he or it shall hold any of the Certificates, and to each other holder of at least 10% in principal amount of the Certificates at the time outstanding, and to the Trustor, promptly upon receipt thereof, duplicates or copies of all reports, notices, requests, demands, certificates, financial statements

and other instruments furnished to the Trustee under the Lease or otherwise received with respect to the Equipment.

SECTION 7.03. The Trustee makes (i) no representation or warranty as to the value, condition, merchantability or fitness for use of any Equipment or as to its title thereto, or any other representation or warranty with respect to the Equipment whatsoever except that the Trustee hereby represents and warrants to each Certificate Holder and to the Trustor that on the Settlement Date for each unit of Equipment the Trustee shall have received whatever title was conveyed to it by the Lessee and the Rebuilder and that each such unit of Equipment shall be free of liens and encumbrances which may result from claims against the Trustee not related to the ownership of such unit of Equipment or the administration of the Trust Estate or any other transaction pursuant to this Trust Agreement or any document included in the Trust Estate, and (ii) no representation or warranty as to the validity, legality or enforceability of this Trust Agreement, the Certificates, the Lease, the Equipment Trust Certificate Purchase Agreement, the Purchase Agreement or the Reconstruction Agreement or as to the correctness of any statement contained in any thereof (other than the representations and warranties of the Trustee under Article IV of the Equipment Trust Certificate Purchase Agreement), except that the Trustee hereby represents and warrants to each Certificate Holder and the Trustor that this Agreement has been, and each of said other documents will be, executed and delivered by one of its officers who is and will be duly authorized to execute and deliver such document on its behalf.

SECTION 7.04. Monies received by the Trustee hereunder need not be segregated in any manner except to the extent required by law and may be deposited with the Trustee under such general conditions as may be prescribed by law in the general banking department of the Trustee, and the Trustee shall not be liable for any interest thereon.

SECTION 7.05. The Trustee shall not incur any liability to anyone in acting upon any signature, instrument, notice, resolution, request, consent, order, certificate, report, opinion, bond or other document or paper reasonably believed by it to be genuine and reasonably believed by it to be signed by the proper party or parties. The Trustee may accept a copy of a resolution of the Board

Directors or the Executive Committee of any corporation, certified by the Secretary or an Assistant Secretary thereof as duly adopted and in full force and effect, as conclusive evidence that such resolution has been duly adopted by said Board or Executive Committee and that the same is in full force and effect. As to any fact or matter the manner of ascertainment of which is not specifically described herein, the Trustee may for all purposes hereof rely on a certificate, signed by the Chairman of the Board, or by the President, or by any Vice President of the Lessee, as to such fact or matter, and such certificate shall constitute full protection to the Trustee for any action taken or omitted to be taken by it in good faith in reliance thereon. In the administration of the trusts hereunder, the Trustee may execute any of the trusts or powers hereof and perform its powers and duties hereunder directly or through agents or attorneys and may, at the expense of the Trust Estate, advise with counsel, accountants and other skilled persons to be selected and employed by it, and the Trustee shall not be liable for anything reasonably done, suffered or omitted in good faith by it in accordance with the advice or opinion of any such counsel, accountants or other skilled persons.

SECTION 7.06. In accepting the trusts hereby created, the Trustee acts solely as trustee hereunder and not in its individual capacity; and all persons, other than the Trustor and the Certificate Holders to the extent provided in Section 7.01 hereof, having any claim against the Trustee by reason of the transactions contemplated hereby shall look only to the Trust Estate for payment or satisfaction thereof.

SECTION 7.07. The Trustor shall pay such compensation to the Trustee for its service hereunder as may be agreed upon from time to time by the Trustee and the Trustor. The Trustee agrees that it shall have no right against the Certificate Holders or, except as specifically provided in this Trust Agreement, the Trust Estate for any fee as compensation for services hereunder.

SECTION 7.08. Any and all exculpatory provisions, immunities and indemnities in favor of the Trustee under this Agreement shall inure to the benefit of the Trustee in its capacity as such, as Lessor under the Lease, as owner under

the Reconstruction Agreement, as purchaser under the Purchase Agreement, as the maker of the Certificates, and as the issuer under the Equipment Trust Certificate Purchase Agreement.

ARTICLE VIII

INDEMNIFICATION OF TRUSTEE BY TRUSTOR

SECTION 8.01. The Trustor hereby agrees, whether or not any of the transactions contemplated hereby shall be consummated, to assume liability for, and to indemnify, protect, save and keep harmless the Trustee, its successors, assigns, agents and servants, from and against any and all liabilities, obligations, losses, damages, penalties, taxes, claims, actions, suits, costs, expenses or disbursements (including legal fees and expenses) of any kind and nature whatsoever which may be imposed on, incurred by or asserted against the Trustee (whether or not also indemnified against by the Lessee under the Lease or also indemnified against by any other person) in any way relating to or arising out of this Trust Agreement, the Certificates, the Lease, the Equipment Trust Certificate Purchase Agreement, the Purchase Agreement, or the Reconstruction Agreement or the enforcement of any of the terms of any thereof, or in any way relating to or arising out of the purchase, reconstruction, acceptance, rejection, ownership, delivery, lease, possession, use, operation, condition, sale, return or other disposition of any Equipment (including, without limitation, latent and other defects, whether or not discoverable, and any claim for patent, trademark, or copyright infringement), or in any way relating to or arising out of the administration of the Trust Estate or the action or inaction of the Trustee hereunder, except only in the case of wilful misconduct or negligence on the part of the Trustee in the performance of its duties hereunder. The indemnities contained in this Section 8.01 shall survive the termination of this Trust Agreement. In addition, if necessary, the Trustee shall be entitled to indemnification from the Trust Estate for any liability, obligation, loss, damage, penalty, claim, action, suit, cost, expense or disbursements indemnified against pursuant to this Section 8.01 to the extent not reimbursed by the Lessee, the Trustor, or any other person; and to

secure the same the Trustee shall have a lien on the Trust Estate prior to any interest therein of any Certificate Holder or the Trustor.

ARTICLE IX

SUCCESSOR TRUSTEE

SECTION 9.01. (a) The Trustee or any successor thereto may resign at any time without cause by giving at least 30 days prior written notice to the Trustor and each Certificate Holder. In addition, the Requisite Parties may at any time remove the Trustee without cause by an instrument in writing delivered to the Trustee, the Trustor (if not then one of the Requisite Parties) and each other Certificate Holder. Any such resignation or removal shall only become effective upon the appointment as hereinafter provided of a successor Trustee and the acceptance of such appointment by such successor Trustee. In the case of the resignation or removal of the Trustee, the Requisite Parties may appoint a successor Trustee by an instrument signed by the Requisite Parties. If the Requisite Parties shall not have appointed a successor Trustee within 30 days after such notice of resignation or removal, the Trustee, the Trustor or any Certificate Holder may apply to any court of competent jurisdiction to appoint a successor Trustee to act until such time, if any, as a successor shall have been appointed by the Requisite Parties as above provided. Any successor Trustee so appointed by such court shall immediately and without further act be superseded by any successor Trustee appointed by the Requisite Parties within one year from the date of the appointment by such court.

(b) Any successor Trustee, whether appointed by a court or by the Requisite Parties or otherwise, shall execute and deliver to the predecessor Trustee an instrument accepting such appointment, and thereupon such successor Trustee, without further act, shall become vested with all of the estates, properties, rights, powers, duties and trusts of the predecessor Trustee in the trusts hereunder with like effect as if originally named as a

Trustee herein, but nevertheless upon the written request of such successor Trustee, such predecessor Trustee shall execute and deliver an instrument transferring to such successor Trustee, upon the trusts herein expressed, all the estates, properties, rights, powers and trusts of such predecessor Trustee, and such predecessor Trustee shall duly assign, transfer, deliver and pay over to such successor Trustee any property or moneys then held by such predecessor Trustee upon the trusts herein expressed.

(c) Any successor Trustee shall be a corporation, or banking association, incorporated under the laws of the United States or any state thereof, having a combined capital and surplus of at least \$50,000,000 and which is authorized under such laws to exercise corporate trust powers and is subject to supervision or examination by federal or state authority.

SECTION 9.02. Any corporation into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any corporation to which substantially all the business of the Trustee may be transferred, shall be the Trustee under this Trust Agreement without further act.

ARTICLE X

SUPPLEMENTS AND AMENDMENTS TO THIS TRUST AGREEMENT AND OTHER DOCUMENTS

SECTION 10.01. At any time and from time to time, upon the written request of the Requisite Parties, (i) the Trustee and the Trustor shall execute a supplement hereto for the purpose of adding provisions to, or changing or eliminating provisions of, this Trust Agreement and as specified in such request and (ii) the Trustee shall enter into such written amendment of or supplement to the Lease, the Purchase Agreement, and the Reconstruction Agreement as the Lessee or Rebuilder, as the case may be, may agree to and as may be specified in such request, or execute and deliver such written waiver or modification of such terms of the Lease, the Purchase Agreement or the Reconstruction Agreement as may be specified in such request; provided, however, that without the consent of the Trustor and each Certificate Holder no such supplement, waiver or modification shall (i) modify any of the provisions of this Section or of Section 1.01(j), 6.01 or 6.02 hereof, (ii) reduce the amount or extend the time of payment of any amount owing under any Certificate or alter or modify the provisions of Article V hereof with respect to the security interest

therein created or the order of priorities in which distributions thereunder shall be made as between the Certificate Holders and the Trustor, (iii) reduce, modify or amend any indemnities in favor of the Certificate Holders or Trustor (notwithstanding the foregoing the indemnities contained in Section 14(b) of the Lease may be modified with the consent of the Trustor only), or (iv) reduce the amount or extend the time of payment of the Basic Rent or Casualty Value for any Equipment as set forth in the Lease, or change the absolute and unconditional character of the obligations of the Lessee as set forth in Section 23 of the Lease.

SECTION 10.02. If in the opinion of the Trustee any document required to be executed pursuant to the terms of Section 10.01 hereof affects any immunity or indemnity in favor of the Trustee under this Agreement or the Lease, the Trustee may in its discretion decline to execute such document.

SECTION 10.03. It shall not be necessary for any written request furnished pursuant to Section 10.01 hereof to specify the particular form of the proposed document to be executed pursuant to said Section, but it shall be sufficient if such request shall indicate the substance thereof.

SECTION 10.04. Promptly after the execution by the Trustee of any document entered into pursuant to Section 10.01 hereof, the Trustee shall mail, by first class mail, postage prepaid, a conformed copy thereof to the Trustor and each Certificate Holder at its address last known to the Trustee, but the failure of the Trustee to mail such conformed copies shall not impair or affect the validity of such document.

ARTICLE XI

MICELLANEOUS

SECTION 11.01. This Trust Agreement and the trusts created hereby shall terminate and this Trust Agreement shall be of no further force or effect upon the earlier of (i) the sale or other final desposition by the Trustee of all Equipment at any time part of the Trust Estate and the final distribution by the Trustee of all monies or other property or proceeds constituting part of the Trust Estate in accordance with

the terms hereof, provided that at such time the Lessee shall have fully complied with all of the terms of the Lease, or (ii) twenty-one years less one day after the date of the earliest acknowledgement of the execution of this Trust Agreement by any party hereto; otherwise this Trust Agreement and the trusts created hereby shall continue in full force and effect in accordance with the terms hereof. Notwithstanding the foregoing, however, the Trustor shall have the absolute right at its sole option at any time to terminate this Trust upon payment to the Trustee, for distribution to the Certificate Holders, of a sum equal to the entire unpaid principal balance of the Certificates then outstanding, plus the entire amount of interest which would have accrued upon all Certificates issued, or provided for, under the Equipment Trust Certificate Purchase Agreement had they been issued, outstanding and payable in accordance with their original terms (without, however, any discounting of such sums to their present value), together with any sums then due to the Trustee hereunder, whereupon this Trust shall terminate and the Trustee shall, after payment to the Certificate Holders of the sums referred to hereinabove, convey and distribute to the Trustor all right, title and interest in and to the Trust Estate, and the Trustor shall thereupon succeed to all of the Trustee's rights, titles and interests hereunder and shall be responsible for all of the Trustee's obligations under this Trust, the Lease, the Purchase Agreement, the Reconstruction Agreement and the Equipment Trust Certificate Purchase Agreement.

SECTION 11.02. Neither the Trustor nor any Certificate Holder shall have legal title to any part of the Trust Estate. No transfer, by operation of law or otherwise, of any Certificate, or the right, title and interest of the Trustor in and to the Trust Estate shall operate to terminate this Trust Agreement or the trust hereunder or entitle any successor or transferee to an accounting or to the transfer to it of legal title to any part of the Trust Estate.

SECTION 11.03. Any sale or other conveyance of any Equipment by the Trustee made pursuant to the terms of this Agreement or of the Lease shall bind the Trustor and the Certificate Holders and shall be effective to transfer or convey all right, title and interest of the Trustee and such parties in and to such Equipment. No purchaser or other grantee shall be required to inquire as to the authorization, necessity, expediency or regularity of such sale or conveyance or as to the application of any sale or other proceeds with respect thereto by the Trustee.

SECTION 11.04. Nothing in this Agreement, whether express or implied, shall be construed to give to any person other than the Trustee, Trustor and the Certificate Holders any legal or equitable right, remedy or claim under or in respect of this Trust Agreement or any Certificate; but this Trust Agreement and the Certificates shall be held to be for the sole and exclusive benefit of the Trustee, the Trustor and the Certificate Holders.

SECTION 11.05. Unless otherwise expressly specified or permitted by the terms hereof, all notices shall be in writing, mailed by first class mail, postage prepaid, and (i) if to the Trustee, addressed as follows: First Western Bank & Trust Company, Trustee Under the Western Pacific Railroad Equipment Trust No. 1, 235 Montgomery Street, San Francisco, California 94104, and (ii) if to the Trustor, its assigns, or any Certificate Holder, addressed to such party at such address as such party shall have furnished by notice to the Trustee or, until an address is so furnished, addressed to such party at its office last known to the Trustee. Whenever any notice in writing is required to be given by the Trustee, the Trustor or any Certificate Holder to any of the other of them, such notice shall be deemed given and such requirement satisfied if such notice is mailed by regular mail, postage prepaid, and addressed as provided above, unless otherwise expressly provided by the terms hereof.

SECTION 11.06. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

SECTION 11.07. No term or provision of this Trust Agreement or the Certificates may be changed, waived, discharged or terminated orally, but, except as provided in Section 10.01 hereof, only by an instrument in writing signed by the party or other person against whom enforcement of the change, waiver, discharge or termination is sought; and any waiver of the terms hereof or of any Certificate shall be effective only in the specific instance and for the specific purpose given.

SECTION 11.08. The Trustor represents and warrants that neither it nor anyone acting in its behalf has directly or indirectly offered any Certificate, or any interest in this Trust, or any similar securities or interests, for sale to, or solicited any offer to acquire any of the same from, any other person, except for the offers made to participate in such transaction to the Certificate Purchasers identified herein and not more than 15 other institutions or sophisticated individual investors of either the Certificates or the interests of the Trustor under this Trust.

SECTION 11.09. This Agreement may be executed by the parties hereto on separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

SECTION 11.10. All covenants and agreements contained herein shall be binding upon, and inure to the benefit of, the Trustee, the Trustor and their respective successors and assigns. Any request, notice, direction, consent, waiver or other instrument or action by the Trustor or any Certificate Holder shall bind the successors and assigns of such party.

SECTION 11.11. The headings of the various Articles herein are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

SECTION 11.12. This Agreement shall in all respects be governed by, and construed in accordance with, the laws of the State of California, including all matters of construction, validity and performance.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective officers thereunto duly authorized as of the day and year first above written and to be delivered in the State of California.

(Corporate Seal)

Attest: W. J. Shubert
V. P.

CROCKER-CITIZENS NATIONAL BANK, Trustor

by Paul S. Schwartz
A.D.

(Corporate Seal)

Attest: Jeff S. Humphreys
Asst. Sec.

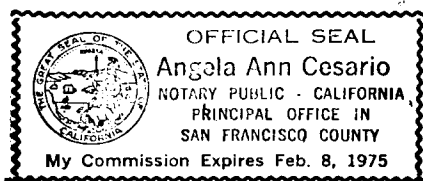
FIRST WESTERN BANK AND TRUST COMPANY,
Trustee

by Edgar E. Thompson
Vice President & Trust Officer

STATE OF California)
) SS.
COUNTY OF San Francisco

On the 2 day of July, 1971, before me personally appeared Paul J. Schwartz, to me personally known, who being duly sworn, says that he is the First Vice President of Crocker-Citizens National Bank; that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[Notarial Seal]



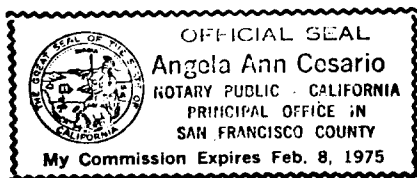
Angela Ann Cesario
Notary Public, County of San Francisco,
State of California

My commission: expires Feb 8, 1975

STATE OF California)
) SS.
COUNTY OF San Francisco

On the 2 day of July, 1971, before me personally appeared Edgar H. Canfield, to me personally known, who being duly sworn, says that he is the Vice President & Trust Officer of First Western Bank and Trust Company; that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[Notarial Seal]



Angela Ann Cesario
Notary Public, County of San Francisco,
State of California

My commission: Feb 8, 1975

EXHIBIT A:
FORM OF RAILROAD EQUIPMENT
LEASE AGREEMENT

RAILROAD EQUIPMENT LEASE AGREEMENT

THIS IS A LEASE AGREEMENT, dated as of June 15, 1971, between FIRST WESTERN BANK AND TRUST COMPANY, of San Francisco, California, as Trustee under the Trust Agreement hereinafter referred to (the Lessor), and THE WESTERN PACIFIC RAILROAD COMPANY, a California corporation (the Lessee).

Section 1. Definitions. The following terms shall have the following meanings for all purposes of this Lease Agreement:

(a) Appraisal shall mean a procedure whereby two recognized independent railroad equipment appraisers, one chosen by Lessee and one by Lessor, shall mutually agree upon the amount in question, or (if they should fail to agree) shall mutually appoint a third independent appraiser who shall determine the amount. If either Lessor or Lessee shall fail to appoint an appraiser within 30 days after notice from the other party or appointment of its appraiser, or if such two appraisers shall be unable to agree on the amount of such appraisal and shall fail to appoint such third appraiser, then either party may apply to the presiding judge of the Superior Court of the City and County of San Francisco, State of California, to make such appointment.

(b) Basic Rent shall mean the aggregate rent payable throughout the term of this Lease pursuant to Section 6 hereof.

(c) Casualty or Casualty Occurrence, when used in respect of units of Equipment, shall mean that such unit of Equipment shall be or become any of the following: lost; stolen; destroyed; in the opinion of the Lessee, irreparably damaged; requisitioned (except for any requisition expressly limited to a period ending prior to the termination of this Lease) or taken over by any governmental authority under the power of eminent domain or otherwise during the term of this Lease; or unsuitable for use in unrestricted interchange as

the result of the effectiveness of any standard or requirement for such Equipment hereafter adopted by or imposed upon the railroad industry generally, if the cost of modifying such unit of Equipment to conform to such new standards or requirements would exceed ten percent (10%) of the Casualty Value (determined as of the effective date of such standard or requirement) of such unit of Equipment.

(d) Casualty Value of each unit of Equipment shall be an amount determined as of the date the Casualty Value is payable as provided in this Lease (and not the date of the Casualty Occurrence) equal to that percentage of the Lessor's Cost of such unit of Equipment as set forth in the Schedule of Casualty Value attached hereto as Exhibit B.

(e) Certificates shall mean the Certificates, as that term is defined in, and which shall be from time to time outstanding under, the Trust Agreement.

(f) Certificate Holder shall mean the holder of a Certificate under and pursuant to the Trust Agreement.

(g) Daily Interim Rent Payment Date shall mean January 31, 1972.

(h) Equipment shall mean the 200 railroad box cars described in Exhibit A hereto, or such lesser number thereof as shall constitute the entire quantity of box cars purchased by Lessor under the Purchase Agreement, reconditioned by Re-builder under the Reconstruction Agreement, and delivered to Lessee by Lessor hereunder.

(i) Equipment Trust Certificate Purchase Agreement means the Agreement so designated, dated as of the date hereof, among the Trustee and the parties designated therein as Certificate Purchasers.

(j) Event of Default shall mean any event specified in Section 16 hereof.

(k) Lease Supplement shall mean a document in the form of Exhibit C hereto, and all references herein to "this Lease" or "this Agreement" shall, unless the context implies otherwise, include each such Lease Supplement.

(l) Lessor's Cost, when applied to one or more units of Equipment, shall mean the aggregate amount payable by Lessor in respect of such unit or units of Equipment (i) to Rebuilder under the Reconstruction Agreement, and (ii) to Lessee under the Purchase Agreement.

(m) Purchase Agreement shall mean the agreement designated as the Railroad Equipment Purchase Agreement, dated as of the date hereof, between Lessor and Lessee.

(n) Reconstruction Agreement shall mean the agreement designated as the Railroad Equipment Reconstruction Agreement, dated as of the date hereof, between Lessor, Lessee, and Rebuilder.

(o) Rent shall mean Basic Rent plus Supplemental Rent.

(p) Rebuilder shall mean Pacific Car and Foundry Company, a Washington corporation.

(q) Supplemental Rent shall mean all amounts, liabilities and obligations which Lessee agrees to pay to Lessor or others hereunder, except Basic Rent.

(r) Trust Agreement means the agreement designated as the Equipment Trust Agreement, dated as of the date hereof, between Crocker-Citizens National Bank, as Trustor, and Lessor, as Trustee (as originally executed and as the same may from time to time be supplemented or amended).

(s) Trustor means the Crocker-Citizens National Bank or any successor thereto as Trustor under the Trust Agreement.

(t) Unit (or units) of Equipment shall mean one (or more) of the boxcars constituting the Equipment.

Section 2. Lease. Lessor hereby agrees to lease the Equipment to Lessee, and Lessee agrees to lease the Equipment from Lessor and pay to Lessor the Rent, all on the terms and conditions herein contained.

Section 3. Acceptance and Delivery. Delivery of Equipment to Lessee by Lessor hereunder shall be made simultaneously with delivery of Equipment to Lessor by Rebuilder

under the Reconstruction Agreement. Acceptance of each unit of Equipment on behalf of Lessor under the Reconstruction Agreement and on behalf of Lessee hereunder shall be made by their authorized representative, who shall be an employee or officer of Lessee selected by Lessee, and who shall, upon finding such unit of Equipment to have been delivered by Rebuilder in good order, execute and deliver to Lessor, Lessee and Rebuilder a Certificate of Acceptance applicable thereto in the form of Exhibit D hereto; whereupon such unit of Equipment shall be deemed to have been delivered to and accepted by Lessee and shall be subject thereafter to all terms and conditions of this Lease. Upon the delivery of the two-hundredth (or final, as the case may be) unit of Equipment, Lessor and Lessee shall each promptly execute and deliver to the other a Lease Supplement in the form of Exhibit C annexed hereto, describing the units so delivered hereunder.

Section 4. Term of Lease. This Lease shall commence upon delivery of the first unit of Equipment to Lessee, and shall terminate twelve (12) years after the Daily Interim Rent Payment Date.

Section 5. Representations and Warranties of Lessee. Lessee represents and warrants that:

(a) Lessee is a corporation duly organized and existing in good standing under the laws of the State of California and has the corporate power and authority to carry on its business as presently conducted and to perform its obligations under this Lease, and is duly qualified to do business wherever necessary to carry on its present business and operations and to own or hold under lease the properties so owned or held;

(b) This Lease, each Lease Supplement, the Purchase Agreement, and the Reconstruction Agreement have been duly authorized by all necessary corporation action on the part of Lessee, do not require any approval of stockholders of Lessee, and neither the execution and delivery thereof nor consummation of the transactions contemplated thereby nor compliance by Lessee with any of the terms and provisions thereof will contravene any law binding on Lessee or result in any breach of, or constitute any default under, or result in the creation of any lien, charge or encumbrance upon any property of Lessee under, any indenture, mortgage, chattel mortgage, deed of trust, conditional sales contract, bank loan or credit agreement,

corporate charter, by-law or other agreement or instrument to which Lessee is a party or by which Lessee or its properties may be bound or affected;

(c) Neither the execution and delivery by Lessee of this Lease or any Lease Supplement, nor any of the transactions by Lessee contemplated hereby or thereby, require the consent or approval of, or the giving of notice to any federal, state or foreign governmental authority, except such, if any, as shall have been duly given prior to the initial delivery of Equipment hereunder;

(d) This Lease, the Purchase Agreement, and the Reconstruction Agreement have been duly entered into and delivered and constitute, and each Lease Supplement, when entered into and delivered, will constitute, legal, valid and binding obligations of Lessee enforceable against Lessee in accordance with the respective terms thereof; except as the same may be limited by laws relating to bankruptcy, insolvency or similar laws affecting generally the rights of creditors.

(e) The Equipment is not and will not become subject to any lien or security interest in favor of any creditor of Lessee pursuant to the terms of any indenture or other instrument affecting Lessee or its property, other than liens or security interests on Lessee's leasehold interests hereunder.

(f) Lessee has as of the date hereof filed or caused to be filed all federal and state tax returns which are required to be filed and, to the extent no extension on filing has been granted, has prior to delinquency paid or caused to be paid all taxes shown to be due or payable on said returns or on any assessment received by Lessee, to the extent that such taxes have become due and payable, or such taxes are being contested by appropriate proceedings.

(g) The financial statements of Lessee heretofore delivered to Lessor are true and correct and fairly depict the financial condition of Lessee as of the date thereof; since such date and until the date of this Lease, there has been no material adverse change in the financial condition of Lessee.

(h) Neither Lessee nor anyone acting on behalf of Lessee has directly or indirectly offered any Certificates or

any similar securities relating to the Equipment or any beneficial interest under the Trust Agreement or any similar instrument, for sale to, or solicited any offers to acquire any of the same from, anyone other than the parties to the Trust Agreement and the Equipment Trust Certificate Purchase Agreement and not more than fifteen other financial institutions or sophisticated individuals.

Section 6. Basic Rent. Lessee agrees to pay Basic Rent hereunder, as follows:

(a) Daily Interim Rent. For each unit of equipment delivered to Lessee hereunder, Lessee shall pay to Lessor, in a lump sum on the Daily Interim Rent Payment Date, daily rental equal to .0330183% of the Lessor's Cost thereof, computed for the period beginning on the date(s) of payment by Lessor of the Lessor's Cost of such unit of Equipment and ending on the Daily Interim Rent Payment Date; provided, however, that the amount of Daily Interim Rent required hereunder shall in no event (and regardless of the number of units of Equipment theretofore delivered to Lessee hereunder, the dates of such delivery, or the payment of Casualty Value for any unit or units pursuant to Section 15(c) hereof) be less than a sum equal to (i) the accrued interest on all Certificates then due (after taking into account any payments applicable to such interest which are payable by the Trustee pursuant to Section 3.02 of the Equipment Trust Certificate Purchase Agreement), plus (ii) 8-3/4% per annum computed on the amount paid by the Lessor to the Lessee under the Purchase Agreement for the period from the date of such payment until the Daily Interim Rent Payment Date.

(b) Periodic Rent. For each unit of Equipment delivered to Lessee hereunder, twenty-four semiannual installments of Periodic Rent, each in the amount of 5.9433% of the Lessor's Cost of such unit of Equipment, payable in advance, beginning with the first such installment on January 31, 1972, and on the last day of each July and January and thereafter until July 31, 1983.

(c) Manner and Place of Payment. Lessee agrees to pay all Basic Rent to Lessor in immediately available funds at Lessor's principal corporate trust office in San Francisco, California, or such other place as shall be agreed upon by Lessor and Lessee.

(d) In the event Federal legislation is enacted prior to December 31, 1972, granting an investment tax credit which is applicable to the units and the Trustor obtains and retains in a permanently nonrefundable manner a benefit from such investment tax credit attributable to the units which it would not otherwise have enjoyed and retained had it not consummated this Lease, each subsequent installment of Periodic Rent shall be reduced by an amount equal to the excess of such installment over sums then due (or to become due on the succeeding day) in respect of the Certificates, until the aggregate of such reductions shall equal such investment tax credit benefit, provided that Lessee shall not be in default on any such Periodic Rent payment date.

Section 7. Return of Equipment. Except as otherwise provided herein, upon the expiration of the term of this Lease with respect to any unit of Equipment the Lessee will, at its own cost and expense, at the request of the Lessor, deliver possession of such unit of Equipment to the Lessor, in the condition required for it to be maintained by Lessee hereunder, upon such storage tracks of the Lessee as the Lessor may designate, or in the absence of such designation, as the Lessee may select, and permit the Lessor to store such unit of Equipment on such tracks for a period not exceeding 45 days and transport the same at any time within such 45 day period to any reasonable place on the railroad lines operated by the Lessee or to any connecting carrier for shipment, all as directed by the Lessor upon not less than 30 days' written notice to Lessee. All movement and storage of each such unit until possession thereof is delivered to Lessor is to be at the risk and expense of the Lessee. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such unit of Equipment, to inspect the same, provided that Lessee shall not be liable, except in the case of negligence of Lessee, for any injury to or death of any person exercising, either on behalf of Lessor or any prospective purchaser, the rights of inspection hereunder.

Section 8. Net Lease. This lease is a net lease and the Lessee shall not be entitled to any abatement of rent or reduction thereof, including, but not limited to, abatements or reductions due to any present or future claims of the Lessee against the Lessor under this Lease or otherwise or against Re-builder under the Reconstruction Agreement, nor except as otherwise expressly provided herein, shall this Lease terminate, or the re-

spective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or failure of title of the Lessor to the Equipment or any defect in or damage to or loss or destruction of all or any of the Equipment from whatsoever cause, the taking or requisitioning of the Equipment by condemnation or otherwise, the lawful prohibition of the Lessee's use of the Equipment, the interference with such use by any private person or corporation, the invalidity or unenforceability or lack of due authorization or other infirmity of this Lease, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events unless the obligation to pay the same shall be terminated pursuant to Section 15 hereof, or until, pursuant to Section 7 hereof, the Equipment is placed and ready for delivery to Lessor on the Lessee's lines, or is stored for the Lessor on the Lessee's lines, or leaves the Lessee's lines for off-line delivery to the Lessor.

Section 9. Warranty Disclaimer. AS BETWEEN LESSOR AND LESSEE, LESSOR LEASES THE EQUIPMENT, AS-IS WITHOUT WARRANTY OR REPRESENTATION EITHER EXPRESS OR IMPLIED, AS TO (A) THE FITNESS OR MERCHANTABILITY OF ANY UNIT OF EQUIPMENT, (B) THE LESSOR'S TITLE THERETO, (C) THE LESSEE'S RIGHT TO THE QUIET ENJOYMENT THEREOF, OR (D) ANY OTHER MATTER WHATSOEVER, IT BEING AGREED THAT ALL SUCH RISKS, AS BETWEEN THE LESSOR AND THE LESSEE, ARE TO BE BORNE BY THE LESSEE. Provided the Lessee is not in default hereunder, the Lessor hereby appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce, from time to time, in the name and for the account of the Lessor and the Lessee, as their interests may appear, but in all cases at the sole cost and expense of the Lessee, whatever claims and rights the Lessor may have as owner of the Equipment against any manufacturers or contractors in respect thereof, including claims and rights against Rebuilder under the Reconstruction Agreement.

Section 10. Ownership.

(a) Retention of Title. The Lessor, as between the Lessor and the Lessee, shall and hereby does retain

full legal title to the Equipment notwithstanding the delivery thereof to and the possession and use thereof by the Lessee.

(b) Duty to Number and Mark Equipment. The Lessee will cause each unit of Equipment to be kept numbered with its road number as set forth in Exhibit A and will keep and maintain, plainly, distinctly, permanently and conspicuously marked by a plate or stencil printed upon each side of each unit of Equipment in letters not less than one inch in height as follows:

"Leased from FIRST WESTERN BANK AND TRUST
COMPANY, Trustee, Owner and Lessor, and
Subject to a Security Interest Recorded
with the I.C.C."

with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the title of the Lessor to such unit of Equipment, its rights under this Lease and the rights of any assignee hereof, or of the Trustor or any Certificate Holders under the Trust Agreement. The Lessee will not place any such unit of equipment in operation or exercise any control or dominion over the same until the required legend shall have been so marked on both sides thereof and will replace promptly any such names and word or words which may be removed, defaced or destroyed. The Lessee will not change the road number of any unit of Equipment except in accordance with a statement of new road numbers to be substituted therefor, which statement previously shall have been filed with the Lessor by the Lessee and filed, recorded or deposited in all public offices where this Lease shall have been filed, recorded or deposited.

(c) Prohibition Against Certain Designations. Except as above provided, the Lessee will not allow the name of any person, association or corporation to be placed on the Equipment as a designation that might be interpreted as a claim of ownership or security interest, provided, however, that the Lessee may cause the Equipment to be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates on railroad equipment used by it of the same or a similar type.

Section 11. Possession, Use and Maintenance;
Liens.

(a) Possession. So long as no Event of Default shall have occurred and be continuing, Lessee shall be en-

titled as against Lessor to the possession and use of the Equipment in accordance with and during the term of this Lease. The Lessee shall not, without the prior written consent of Lessor, part with possession or control of, or suffer or allow to pass out of its possession or control, any of the Equipment; provided, however, that Lessee shall, in the absence of any Event of Default, be entitled to the possession of the Equipment and to the use thereof upon the railroad lines owned or operated by it (either alone or jointly) or by any corporation a majority of whose voting stock (i.e., having ordinary voting power for the election of a majority of its Board of Directors) is owned directly or indirectly by the Lessee, or upon railroad lines over which the Lessee or such corporation has trackage or other operating rights or over which equipment of the Lessee is regularly operated pursuant to contract and also to permit the use of the Equipment upon connection and other railroads or other carriers in the usual interchange of traffic and equipment, if customary at the time and upon connecting and other railroads or other carriers over which through service may from time to time be afforded, and the Lessee may receive compensation for such use, but only upon and subject to all the terms and conditions of this Lease. No assignment, sublease or interchange agreement entered into by the Lessee hereunder shall relieve the Lessee of any liability or obligations hereunder which shall be and remain those of a principal and not a surety.

(b) Use and Maintenance. The Lessee shall use the Equipment only in the manner for which it was designed and intended and so as to subject it only to ordinary wear and tear. The Lessee shall, at its own cost and expense, maintain and keep the Equipment (except any Equipment as to which a Casualty Occurrence shall have occurred) in good order, condition and repair, ordinary wear and tear excepted, suitable for use in interchange. The Lessee shall not modify any unit of Equipment without the written authority and approval of the Lessor which shall not be unreasonably withheld. Any parts installed or replacements made by the Lessee upon any unit of Equipment shall be considered accessions to such unit of Equipment and title thereto shall be immediately vested in the Lessor, without cost or expense to the Lessor, except that this shall not apply to special equipment installed in any unit by Lessee with the consent of Lessor provided that such equipment is removed by Lessee before the units are returned to Lessor and all damage resulting from such installation and removal is repaired by Lessee and further provided that removal of such equipment does

not affect the units' serviceability or use in unrestricted interchange.

(c) Governmental Laws, Rules and Regulations. The Lessee agrees to comply with all governmental laws, regulations, requirements and rules (including the rules of the United States Department of Transportation and the current Interchange Rules and supplements thereto of the Mechanical Division Association of American Railroads) with respect to the use, maintenance and operation of each unit of Equipment subject to this Lease. In case any equipment or appliance is required to be installed on any such unit of Equipment in order to comply with such laws, regulations, requirements and rules, the Lessee agrees to make such changes, additions and replacements, at Lessee's expense.

(d) Liens. The Lessee shall pay or satisfy and discharge any and all claims against, through, or under the Lessee and its successors which, if unpaid, might constitute or become a lien or a charge upon the Equipment, and any liens or charges which may be levied against or imposed upon any unit of Equipment as a result of the failure of the Lessee to perform or observe any of its covenants or agreements under this Lease, but the Lessee shall not be required to pay or discharge any such claims so long as it shall, in good faith and by appropriate legal proceedings contest the validity thereof in any reasonable manner which will not affect or endanger the title and interest of the Lessor to the Equipment. The Lessee's obligations under this Section 11(d) shall survive termination of the Lease.

(e) Insurance. The Lessee will, at all times while this Lease is in effect, at its own expense, caused to be carried and maintained insurance in respect of the units at the time subject hereto, in amounts and against risks customarily insured against by railroad companies on similar equipment, and in any event in amounts and against risks comparable to those insured against by the Lessee on equipment owned by it. All proceeds of such insurance shall be paid to Lessor and applied or distributed by it as follows: (i) in the case of loss or destruction of such unit constituting a Casualty thereto, the Lessor shall apply such proceeds toward the payment of the Casualty Value thereof (or, in the event such Casualty Value shall have theretofore been paid by Lessee, the same shall be remitted to Lessee); and (ii) in the case of any damage not constituting a Casualty, such proceeds shall be remitted to Lessee; provided, however, that notwithstanding the foregoing the

Lessor may retain and apply such proceeds toward the payment of any sums due or to become due from Lessor hereunder in the event that, at the time of Lessor's receipt of such proceeds, an Event of Default hereunder shall have occurred and is then continuing.

Section 12. Taxes. Lessee agrees to pay, and to indemnify and hold Lessor, and the Trustor harmless from, all license and registration fees and all taxes, including without limitation, income, franchise, sales, use, personal property, stamp, interest equalization or other taxes, levies, imposts, duties, charges or withholdings of any nature (together with any penalties, fines, or interest thereon) imposed against any such party or the Equipment by any federal, state or local government or taxing authority in the United States or by any foreign government or any subdivision thereof (adjusted, as the same may be obtained by any such person, for corresponding tax credits received by the same person from any other jurisdiction) upon or with respect to the Equipment, or upon the purchase, ownership, delivery, leasing, possession, use, operation, return or other disposition thereof, or upon the rentals, receipts or earnings arising therefrom, or upon the income or other proceeds received with respect to the Equipment until possession of the Equipment has been delivered to Lessor in accordance with Section 7 hereof, or upon or with respect to this Lease, the Trust Agreement or the issuance of the Certificates under the Trust Agreement [excluding, however, (except as otherwise provided in Section 14(b) hereof) federal taxes on, or measured by, the net income of any party and taxes, fees or other charges of any other jurisdiction which are based on, or measured by, the net income of any such party and (i) imposed by the jurisdiction in which the principal office of such party is located or in which such party resides, or (ii) imposed by any other jurisdiction in which such party is subject to taxes, fees or other charges as the result, whether solely or in part, of business or transactions unrelated to this Lease and excluding any taxes on or measured by any fees or compensation received by Lessor for services rendered in connection with the transactions contemplated hereby and further excluding any taxes based on gross income of any such party (other than gross receipts taxes in the nature of sale or use tax) which may hereafter be imposed in any such jurisdiction as a substitute for and not in addition to taxes based on net income] unless, and to the extent only, that any such tax, levy, impost, duty, charge or withholding is being contested by Lessee in good faith and by appropriate proceedings so long as such proceedings do not

involve any danger of the sale, forfeiture, or loss of the Equipment or interest therein. In case any report or return is required to be made with respect to any obligation of Lessee under this Section or arising out of this Section, Lessee will either make such report or return in such manner as will show the ownership of the Equipment in Lessor and send a copy of such report or return to Lessor or will notify Lessor of such requirement and make such report or return in such manner as shall be satisfactory to Lessor. All amounts payable by Lessee pursuant to this Section 12 shall be payable, to the extent not theretofore paid, on written demand by the Lessor or Trustor. All the indemnities contained in this Section 12 shall continue in full force and effect notwithstanding the expiration or other termination of this Lease and shall be enforceable by Lessor or the Trustor, provided that the foregoing indemnities shall not apply to any of the aforesaid taxes, fees and charges which arise during and incurred with respect to the period following the end of the term of this Lease.

Section 13. Filing. Prior to delivery and acceptance of the first unit of Equipment hereunder, the Lessee will at its sole expense cause this Lease to be duly filed in accordance with Section 20c of the Interstate Commerce Act. Lessee will, as promptly as practicable after execution and delivery to it of any Lease Supplement (but in any event not later than one day before the date on which Lessor shall be obligated to make payments under the Reconstruction Agreement in respect of the units of Equipment covered by such Lease Supplement) cause such Lease Supplement also to be duly filed in accordance with said statute, and will, from time to time, do and perform any other act and will execute, acknowledge, deliver, file, register and record (and will re-file, re-register, or re-record whenever required) any and all further instruments required by law or reasonably requested by the Lessor, for the purpose of protecting the Lessor's title to, or any Certificate Holder's security interest in, the Equipment and the sums due under this Lease to the satisfaction of the Lessor's or such Certificate Holder's counsel or for the purpose of carrying out the intention of this Lease, and in connection with any such action, will deliver to the Lessor proof of such filings and an opinion of the Lessee's counsel that such action has been properly taken. The Lessee will pay all costs, charges, and expenses incident to any filing or recording of the Trust Agreement (and supplements or amendments thereto), with the Interstate Commerce Commission or otherwise, and any other aforementioned filing, re-filing, registering, re-registering, recording and re-recording of any such instruments or incident to the taking of such action.

Section 14. Indemnities.

*from and after
the date hereof, and*

(a) General Indemnity. Lessee hereby agrees¹ whether or not any of the transaction contemplated hereby shall be consummated, to assume liability for, and does hereby agree to indemnify, protect, save and keep harmless Lessor, the Trustor and each Certificate Holder, and their respective successors, assigns, agents and servants, from and against any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs, expenses and disbursements, including legal fees and expenses, of whatsoever kind and nature, imposed on, incurred by or asserted against Lessor, the Trustor or any Certificate Holder or any of their respective successors, assigns, agents and servants, in any way relating to or arising out of the Purchase Agreement, Reconstruction Agreement, the manufacture,

purchase, acceptance or rejection under the Reconstruction Agreement, ownership, delivery, lease, possession, use, operation, condition, sale, return or other disposition of the equipment (including, without limitation, latent and other defects, whether or not discoverable by any of such parties, and any claim for patent, trademark or copyright infringement), except only that Lessee shall not be required to indemnify Lessor, the Trustor or any Certificate Holders or their respective successors, assigns, agents, and servants, for loss or liability in respect of any unit of Equipment arising from acts or events which occur after possession of such unit of Equipment has been delivered to Lessor in accordance with Section 7 hereof, or loss or liability resulting from the willful misconduct or gross negligence of the party otherwise to be indemnified hereunder. If Lessor shall have knowledge of any claim or liability hereby indemnified against, it shall give prompt written notice thereof to the Lessee, and Lessee shall have the right and obligation to conduct and pay the expenses of the defense of any such claim. Lessee's obligations hereunder shall be that of primary obligor irrespective of whether the individual or corporation indemnified shall also be indemnified with respect to the same matter under any other agreement by any or all such parties, or any other person. Upon payment in full of any indemnities contained herein by Lessee, it shall be subrogated to any rights of the individual or corporation indemnified in respect of the matter against which indemnity has been given. The indemnities in favor of the Lessor hereunder shall inure to the benefit of the Lessor in its capacity as such, as Trustee under the Trust Agreement, as purchaser under the Purchase Agreement, and as a party to the Reconstruction Agreement.

(b) Indemnities for Failure to Obtain Depreciation, Amortization or Interest Deductions. 1. If the Trustor shall (except as herein below provided) fail to obtain or have the right to claim or shall be disallowed, a depreciation or amortization deduction with respect to Lessor's Cost of any unit of Equipment, in computing its taxable income for the period this Lease is in effect (computed (i) as to that portion of Lessor's Cost which represents payments made under the Purchase Agreement, under one of the accelerated methods of depreciation provided in Section 167 of the Internal Revenue Code of 1954, as amended to the date hereof, and (ii) as to that portion of Lessor's Cost representing amounts paid under the Reconstruction Agreement, in accordance with the provisions of Section 184

of the Internal Revenue Code of 1954, as amended as of the date hereof), or shall for any reason (except as herein below provided) fail to obtain, or to have the right to claim, or shall be disallowed, a deduction with respect to amounts paid or accrued as interest on the Certificates in computing its taxable income for the period the Certificates are outstanding, as provided in Section 163(a) of the Internal Revenue Code of 1954, except for any inability to obtain or to have the right to claim such deductions because of the occurrence of any of the following events:

(i) Casualty shall occur with respect to such unit of Equipment, whereby Lessee is required by the terms hereof to pay, and shall pay in full, the Casualty Value; provided, however, that the indemnities set forth in this Section 14(b)1 shall continue in effect as provided in Section 14(c) hereof, notwithstanding such payment of Casualty Value, with respect to the period beginning on the delivery date of such unit of Equipment and ending on the date of payment of said Casualty Value;

(ii) at any time while such unit of Equipment is leased hereunder, and while no Event of Default has occurred and is continuing unremedied, without the written consent of Lessee, Lessor shall (other than solely in connection with a substitution of the Trustee pursuant to the Trust Agreement) voluntarily or (except in a case constituting a Casualty) involuntarily transfer legal title to such unit of Equipment to anyone or the Trustor shall dispose of any interest in the Equipment or shall reduce its interest in the profits from the Equipment, and such transfer by Lessor or such disposal or reduction by the Trustor shall be the direct cause of the Trustor's inability to obtain or to have the right to claim or of the disallowance of such depreciation or amortization deduction or interest deduction;

(iii) the parties to the Trust Agreement shall amend such document without the prior written consent of Lessee and such amendment shall be the direct cause of Trustor's inability to obtain or to have the right to claim or of the disallowance of such depreciation or amortization deduction or interest deduction;

(iv) the Trustor shall fail to claim such depreciation or amortization deduction or interest deduction in its income tax returns for the appropriate year or shall fail to follow the proper procedure in claiming such depreciation deduction or interest deduction, and such failure to claim or to follow such procedure, as the case may be, shall preclude the Trustor from claiming such depreciation or amortization deduction or interest deduction; provided, however that if the Trustor shall, in preparing and/or approving its own income tax returns and the income tax returns for the trust created by the Trust Agreement, obtain and rely upon the advice of counsel to the effect that such returns properly claim the aforesaid deductions, then the Trustor shall in such cases not be deemed to have failed to claim a deduction or follow proper procedure as hereinabove provided;

(v) the Trustor shall fail to have sufficient income to benefit from the deduction of such depreciation, amortization or interest;

(vi) the Trustor or Lessor shall fail to take timely action in contesting a claim made by the Internal Revenue Service with respect to the disallowance of such depreciation or amortization deduction or interest deduction, and the failure to take such action in a timely manner shall preclude the right of such party to contest such claim, or shall fail to take action to contest any such claim after a timely request to conduct such contest has been given by Lessee to Lessor or Trustor (provided that the Lessee shall upon demand of the Trustor pay to the Trustor the expenses of any such contest as a condition of prosecuting the same); or the Lessor or Trustor shall, without the prior written consent of Lessee, release, waive, compromise or settle any action or proceeding taken in accordance with this subsection; or

(vii) any other fault of the Trustor which directly causes the loss of any of the aforesaid tax benefits; provided, however, that the execution and delivery of this Lease and the other documents herein referred to and the carrying out of the transactions contemplated herein and therein in accordance with the terms of this Lease and such other documents shall not be deemed to have caused the loss of such tax benefit under this paragraph (vii);

then Lessee shall pay Lessor as Supplemental Rent an amount which, after deduction of all taxes required to be paid by Lessor and/or the Trustor in respect of the receipt thereof under the laws of the United States or any state, city or other political subdivision thereof (after giving credit for any savings in respect of any such taxes by reason of deductions, credits or allowances in respect of the payment of any other such taxes), in the reasonable opinion of the Trustor, will cause net-after tax return on the Trustor's investment in the Equipment to be equal to the net-after tax return on such investment which the Trustor would have realized had the Trustor had the full tax benefit of all amortization, accelerated depreciation, and interest deductions described in the opening paragraph of this subsection 14(b)1 (after taking into account the amount of any interest or penalties which may be assessed against the Lessor or the Trustor in connection with the failure to obtain or have the right to claim, or the disallowance of, such depreciation, amortization or interest deductions).

2. Indemnities pursuant to this paragraph (b) shall be payable on written demand made at any time after such interest deduction or such depreciation or amortization deduction could have been claimed if allowable or, if claimed and then disallowed, on written notice given by the Trustor at any time that the Trustor has first made a payment on account of a tax attributable to the loss of depreciation, amortization or interest deductions.

(c) Continuing Indemnity. All the indemnities contained in paragraphs (a) and (b) of this Section 14 shall continue in full force and effect in accordance with their terms notwithstanding the expiration or other termination of this Lease and are expressly made for the benefit of, and shall be enforceable by, Lessor, Trustor and the Certificate Holders, as the case may be.

Section 15. Casualty Loss. In the event of a Casualty as to any unit of Equipment:

(a) Report. Such fact shall promptly be reported by Lessee to Lessor.

(b) Amount Payable to Lessor. Except as provided in Section 15(c), on the date specified in Section 6 for payment of the installment of Basic Rent which next occurs 10 or more business days following the date of such Casualty Occurrence, Lessee shall pay to Lessor (in addition to the Basic

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If Lessee makes a payment to Lessor pursuant to the indemnity in this Paragraph 14(b) and subsequently a final recovery from any taxing authority is made by Lessor, or Trustor, of a respective amount so paid theretofore by Lessee in indemnification, then Lessor or Trustor, respectively, shall upon demand pay to Lessee any such amount so recovered, including any interest received but after deducting any out of pocket expenses incurred in effecting such recovery and in no case more than the respective amount paid by Lessee in indemnification plus interest at 6%.

Rent payment due on such date) the Casualty Value of such unit of Equipment, determined as of the date of such payment.

(c) Casualty Occurring Prior to Date of Payment of Interim Daily Rent. In the event the Lessee shall have notified the Lessor that a unit or units of Equipment have suffered a Casualty Occurrence 15 days or more prior to the Daily Interim Rent Payment Date, the Casualty Value for such unit or units shall be an amount equal to Lessor's Cost thereof plus the Daily Interim Rent therefor computed for the period from the date of delivery of such unit hereunder to the date of payment of such Casualty Value, which payment shall be made not more than 15 days after the date of notice to the Lessor of such Casualty Occurrence. If the Lessee shall have notified the Lessor that a unit or units of Equipment have suffered a Casualty Occurrence less than 15 days prior to the Daily Interim Rent Payment Date, the date of such Casualty Occurrence for such unit or units shall be deemed to be one day after the Daily Interim Rent Payment Date.

(d) Rent Termination. Upon (and not until) payment of the Casualty Value in respect of any unit or units of Equipment, and any Basic Rent installment due on the Casualty Value payment date, the obligation to pay rent for such unit or units of Equipment shall terminate, but the Lessee shall continue to pay Rent for all other units of Equipment.

(e) Disposition of Equipment. The Lessee shall, as agent for the Lessor, dispose of such unit or units of Equipment as soon as it is able to do so for the best price obtainable. Any such disposition shall be on an "as is", "where is" basis without representation or warranty, express or implied. As to each separate unit of Equipment so disposed of the Lessee may, after paying Lessor the amounts specified in subparagraphs (b) or (c) of this Section 15, retain all amounts of such price plus any damages received by the Lessee by reason of such Casualty Occurrence, up to the sum of (i) the Casualty Value attributable thereto, and (ii) the amounts paid under subparagraph (b) or (c) of this section 15, and shall remit the excess, if any, to the Lessor. In disposing of such unit or units of Equipment, the Lessee shall take such action as the Lessor shall reasonably request to terminate any contingent liability which the Lessor might have arising after disposition from or connected with such unit or units of Equipment.

(f) Risk of Loss. The Lessee shall bear the risk of and, except as hereinabove in this Section 15 provided, shall not be released from its obligations hereunder in the event of any Casualty Occurrence to any unit of Equipment.

(g) Eminent Domain. In the event that during the term of this Lease the use of any unit of Equipment is requisitioned or taken by any governmental authority under the power of eminent domain or otherwise for a period which does not exceed the remaining term of this Lease, the Lessee's duty hereunder to pay Rent in respect of any such unit of Equipment shall continue for the duration of said requisitioning or taking. The Lessee shall be entitled to receive and retain for its own account all sums payable for any such period by such governmental authority as compensation for requisition or taking of possession to an amount equal to the Basic Rent paid or payable hereunder in respect of such unit of Equipment for such period, and the balance, if any, shall be payable to and retained by the Lessor as its sole property.

Section 16. Events of Default. The following events shall constitute Events of Default (whether any such event shall be voluntary or involuntary or come about or be effected by operation of law or pursuant to or in compliance with any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(a) Lessee shall fail to make any payment of Basic Rent when due and such failure shall continue unremedied for a period of 5 business days; or

(b) Lessee shall fail to perform or observe any other covenant, condition or agreement to be performed or observed by it hereunder or under the Purchase Agreement or the Reconstruction Agreement and such failure shall continue unremedied for a period of 30 business days after written notice thereof from Lessor specifying such default; or

(c) any representation or warranty made by Lessee herein or in any document or certificate furnished Lessor in connection herewith or pursuant hereto (i) shall prove to have been incorrect in any material respect when made, or (ii) which is on-going and unremedied after 30 days' notice and breach of which hereafter shall materially impair or hinder Lessee's performance, or ability to perform hereunder; or

(d) Lessee shall consent to the appointment of a receiver, trustee or liquidator of itself or of all or substantially all of its property, or Lessee shall admit in writing its inability to pay its debts generally as they come due, or shall make a general assignment for the benefit of creditors, or Lessee shall file a voluntary petition in bankruptcy or a voluntary petition or an answer seeking reorganization in a proceeding under any bankruptcy laws (as now or hereafter in effect) or an answer admitting the material allegations of a petition filed against Lessee in any such proceeding, or Lessee shall by voluntary petition, answer or consent seek relief under the provisions of any other similar law providing for the reorganization or winding-up of corporations, or providing for an agreement, composition, extension or adjustment with its creditors; or

(e) an order, judgment or decree shall be entered by any court of competent jurisdiction appointing, without the consent of Lessee, a receiver, trustee or liquidator of Lessee or of all or substantially all of its property, or substantially all of the property of Lessee shall be sequestered, and any such order, judgment or decree of appointment or sequestration shall remain in force undismitted, unstayed or unvacated for a period of 90 days after the date of entry thereof; or

(f) a petition against Lessee in a proceeding under the federal bankruptcy laws or other insolvency laws (as now or hereafter in effect) shall be filed and shall not be withdrawn or dismissed within 90 days thereafter, of if, under the provisions of any law providing for reorganization or winding-up of corporations which may apply to Lessee, any court of competent jurisdiction shall assume jurisdiction, custody or control of Lessee or of all or substantially all of its property, and such jurisdiction, custody or control shall remain in force unrelinquished, unstayed or unterminated for a period of 90 days.

Notwithstanding the provisions of paragraphs (d), (e) and (f) of this Section 16, if, within 60 days after the commencement of any proceedings, referred to in said paragraphs (d), (e) and (f) or within 30 days after the appointment of a trustee or trustees or receiver or receivers in such proceedings, whichever shall be earlier, all of the obligations of Lessee under this Lease shall have been duly assumed in writing, pursuant to a court order or decree, by a trustee or receiver or receivers appointed for Lessee or for the property of Lessee in connection with any such proceedings, in such manner that such obligations shall have substantially the same status as

obligations incurred by such trustee or trustees or receiver or receivers, then and for so long as such trustee or trustees or receiver or receivers shall remain so obligated, no Event of Default shall be deemed to exist under the provisions of paragraph (d), (e) or (f) of this Section 16.

Section 17. Remedies. Upon the occurrence of any Event of Default and at any time thereafter so long as the same shall be continuing, Lessor may, at its option, declare this Lease to be in default and at any time thereafter, so long as Lessee shall not have remedied all outstanding Events of Default, Lessor may do one or more of the following with respect to the Equipment as Lessor in its sole discretion shall elect, to the extent permitted by, and subject to compliance with any mandatory requirements of, applicable law then in effect;

(a) demand that Lessee, and Lessee shall upon the written demand of Lessor and at Lessee's expense, return promptly the Equipment to Lessor in the manner and condition required by, and otherwise in accordance with all of the provisions of, Section 7 hereof as if the Equipment were being returned at the end of the term of this Lease; or Lessor, at its option, may enter upon the premises where all or any part of the Equipment is located and take immediate possession of and remove the same by summary proceedings or otherwise, all without liability to Lessor for or by reason of such entry of taking possession, whether for the restoration of damage to property caused by such taking or otherwise;

(b) sell the Equipment at public or private sale, as Lessor may determine, or otherwise dispose of, hold, use, operate, lease to others or keep idle the Equipment as Lessor in its sole discretion may determine, all free and clear of any rights of Lessee and without any duty to account to Lessee with respect to such action or inaction or for any proceeds with respect thereto, and Lessee hereby irrevocably authorizes Lessor to execute, in the name and on behalf of Lessee, any documents necessary or desirable to effectuate the aforesaid rights of Lessor;

(c) except as stated in this paragraph (c), whether or not Lessor shall have exercise, or shall thereafter at any time exercise, any of its rights under paragraph (a) or paragraph (b) above with respect to the Equipment, Lessor, by written notice to Lessee specifying a payment date which shall

be a Basic Rent payment date specified in Section 6 not earlier than 10 business days from the date of such notice, may demand that Lessee pay to Lessor and Lessee shall pay to Lessor, on the payment date specified in such notice, as liquidated damages for loss of a bargain and not as a penalty (in lieu of the Basic Rent for the Equipment due after the payment date specified for payment in such notice), any unpaid Basic Rent for the Equipment due for periods up to and including the payment date specified in such notice plus whichever of the following amounts Lessor, in its sole discretion, shall specify in such notice (together with interest on such amount at the rate of 10% per annum from the payment date specified in such notice to the date of actual payment); (i) an amount equal to the excess, if any, of the Casualty Value for the Equipment, computed as of the rental payment date specified for payment in such notice, over the aggregate fair market rental value of the Equipment for the remainder of the term of this Lease (discounted to present value at 6% per annum); or (ii) an amount equal to the excess, if any, of the Casualty Value for the Equipment as of the date specified in such notice over the fair market sales value of the Equipment, provided, however, that if by the payment date specified in such notice Lessor, pursuant to paragraph (b) above, shall have sold the Equipment and the amounts in respect of the Equipment which Lessor might demand if it exercised its rights under paragraph (d) below is less than the amount specified in or payable under any notice given under this paragraph (c), Lessee shall pay to Lessor the amounts computed under paragraph (d) below, and not the amounts specified in or payable under the notice given under this paragraph (c);

(d) in the event Lessor, pursuant to paragraph (b) above, shall have sold the Equipment, Lessor, in lieu of exercising its rights under paragraph (c) above with respect to the Equipment, may, if it shall so elect, demand that Lessee pay Lessor and Lessee shall pay to Lessor, as liquidated damages for a loss of a bargain and not as a penalty (in lieu of the Basic Rent for the Equipment due beginning on or after the rental payment date next following the date on which such sale occurs), any unpaid Basic Rent for the Equipment due for periods up to and including the Basic Rent payment date next following the date on which such sale occurs plus the amount of any deficiency between the net proceeds of such sale and the Casualty Value of the Equipment, computed as of the Basic Rent payment date next following the date on which such sale occurs, together with interest at the rate of 10% per annum on the amount of such deficiency from the Basic Rent payment date as of which such Casualty Value is computed until the date of actual payment; and/or

(c) Lessor may exercise any other right or remedy which may be available to it under applicable law or proceed by appropriate court action to enforce the terms hereof or to terminate this Lease as to the Equipment.

In addition, Lessee shall be liable, except as otherwise provided above, for any and all unpaid Rent due hereunder before or during the exercise of any of the foregoing remedies and for all legal fees and other costs and expenses incurred by reason of Lessor's remedies with respect thereof, including all costs and expenses incurred in connection with the return of the Equipment in accordance with the terms of Section 7 hereof or in placing such Equipment in the condition required by said Section. No express or implied waiver by Lessor of any Event of Default shall in any way be, or be construed to be, a waiver of any future or subsequent Event of Default. To the extent permitted by applicable law, Lessee hereby waives any rights now or hereafter conferred by statute or otherwise which may require Lessor to sell, lease or otherwise use the Equipment in mitigation of Lessor's damages as set forth in this Section or which may otherwise limit or modify any of Lessor's rights or remedies under this Section. For purposes hereof, the "fair market rental value" or the "fair market sales value" of the Equipment shall mean such value as determined by mutual written agreement of Lessor and Lessee or, upon request by Lessor at any time prior to the making of such mutual agreement, by Appraisal.

Section 18. Annual Reports.

(a) Duty of Lessee to Furnish. On or before August 1 in each year, commencing with the year 1972, the Lessee will furnish to the Lessor or its assigns an accurate statement, as of the preceding June 30 (a) showing the amount, description and numbers of the units of Equipment then leased hereunder, the amount, description and numbers of all units of Equipment that may have suffered a Casualty Occurrence during the preceding 12 months (or since the date of this Lease, in the case of the first such statement), and such other information regarding the condition or repair of the Equipment as Lessor may reasonably request, and (b) stating that, in the case of all Equipment repainted during the period covered by such statement, the markings required by Section 10(b) hereof shall have been preserved or replaced.

(b) Lessor's Inspection Rights. The Lessor or its assigns shall have the right, at its sole cost and expense, by its authorized representative, to inspect the Equipment and the Lessee's records with respect thereto, at such times as shall be reasonably necessary to confirm to the Lessor or its assigns the existence and proper maintenance thereof during the continuance of this Lease.

Section 19. Option to Purchase. Provided that the Lessee is not in default, Lessee shall have the following option to purchase:

(a) Option. The Lessee shall have the right to purchase all but not less than all of the Equipment then leased hereunder at the expiration of the term of this Lease at a price equal to the then fair market sales value. The Lessee shall give the Lessor written notice 180 days prior to the end of the term of its election to exercise the purchase option provided for in this Section. Lessor and Lessee shall consult to determine such fair market sales value; if the parties fail to agree upon such value prior to 120 days prior to the end of the term, Lessee may request that such value be determined by Appraisal. Payment of the option price shall be made at the place of payment specified in Section 6(c) hereof in funds there current against delivery of a bill of sale transferring and assigning to the Lessee all right, title and interest of the Lessor in and to the Equipment and containing a warranty against liens or claims of persons claiming by, through or under the Lessor except liens and claims which the Lessee assumed or is obligated to discharge under the terms of the Lease. The Lessor shall not be required to make any representation or warranty as to the condition of the Equipment or any other matters.

(b) Notice. Unless the Lessee has given the Lessor 180 days notice as required in connection with exercise of the foregoing option, all the Equipment then leased hereunder shall be returned to the Lessor in accordance with Section 7 hereof.

(c) Election to Purchase. Notwithstanding any election of the Lessee to purchase, the provisions of Section 15 hereof shall continue in full force and effect until the date of purchase and the passage of ownership of the Equipment purchased by the Lessee upon the date of purchase, unless the purchase price has been determined pursuant to this Section

and is lower than the Casualty Value required pursuant to Section 15 hereof, in which event such purchase price shall govern.

Section 20. Merger; Assignment by Lessee.

(a) Lessee may not sell or convey its property and assets as an entirety or substantially as an entirety to, or consolidate or merge with or into, any other corporation, unless (i) the successor corporation shall be a corporation incorporated under the laws of the United States of America or of any state or states thereof, (ii) upon any such sale, conveyance, consolidation or merger, the successor or purchasing corporation shall expressly assume the due and punctual payment of Basic Rent, all Supplemental Rent, and Casualty Value in accordance with the terms of this Lease, as well as the due and punctual performance and observance of all other terms, covenants and conditions of this Lease to be kept and performed by Lessee, (iii) after giving effect to any such sale, conveyance, consolidation or merger no Event of Default and no event which with notice or lapse of time or both would constitute an Event of Default shall have occurred and be continuing and (iv) Lessor shall be promptly notified of such sale, conveyance, merger or consolidation. Any such purchasing or successor corporation shall be substituted for Lessee as Lessee hereunder.

(b) Except to the extent otherwise expressly provided in this Lease, Lessee will not, without the prior written consent of Lessor, assign any of its rights or delegate any of its duties hereunder. The rights and obligations of Lessor and Lessee hereunder shall inure to the benefit of, and be binding upon, the permitted successors and assigns of Lessor and Lessee, respectively.

Section 21. Assignments by Lessor. This Lease shall be assignable by Lessor without the consent of Lessee, but Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. In the event that separate assignments are executed by the Lessor in respect of this Lease and the rental and other sums due and to be come due hereunder, insofar as the same related to units of Equipment, the Lessor and the Lessee agree that so long as such separate assignments remain in force and effect this Lease shall be deemed to be and shall be construed as a divisible and severable contract between the Lessor and

the Lessee for the leasing of Equipment covered by each such separate assignment, all to the same extent and with the same force and effect as though a separate lease had been entered into by the Lessor and the Lessee in respect of such Equipment. Upon notice to the Lessee of any such assignment the rent and other sums payable by the Lessee which are the subject matter of the assignment shall be paid to the assignee. Without limiting the foregoing, the Lessee further acknowledges and agrees that (i) the rights of any such assignee in and to the sums payable by the Lessee under any provisions of this Lease shall not be subject to any abatement whatsoever, and shall not be subject to any defense, set-off, counterclaim or recoupment whatsoever whether by reason of or defect in Lessor's title, or any interruption from whatsoever cause (other than from a wrongful act of the assignee) in the use, operation or possession of the Equipment or any part thereof, or any damage to or loss or destruction of the Equipment or any part thereof, or by reason of any other indebtedness or liability, howsoever and whenever arising, of the Lessor to the Lessee or to any other person, firm or corporation or to any governmental authority or for any cause whatsoever, it being the intent hereof that, except in the event of a wrongful act on the part of the assignee, the Lessee shall be unconditionally and absolutely obligated to pay the assignee all of the rents and other sums which are the subject matter of the assignment and which shall become payable after Lessee receives notice of such assignment, and (ii) the assignee shall have the sole right to exercise all rights, privileges and remedies (either in its own name or in the name of the Lessor for the use and benefit of the assignee) which by the terms of this Lease are permitted or provided to be exercised by the Lessor. Lessee and Lessor acknowledge that the Trust Agreement creates, for the pro rata benefit of the Certificate Holders, a security interest in the Equipment, this Lease, and all Rent (other than certain items of Rent specified therein) payable hereunder.

Section 22. Lessor's Right to Perform for Lessee.

If Lessee fails to make any payment of Supplemental Rent required to be made by it hereunder or fails to perform or comply with any of its agreements contained herein, Lessor may itself make such payment or perform or comply with such agreement, and the amount of such payment and the amount of the reasonable expenses of Lessor incurred in connection with such payment or the performance of or compliance with such agreement, as the case may be, together with interest thereon at the rate of 10% per annum shall be deemed Supplemental Rent, payable by Lessee upon demand.

Section 23. No Set-Off for Lessee. Lessee's obligation to pay all Rent payable hereunder shall be absolute and unconditional and shall not be affected by any circumstance, including, without limitation, (i) any set-off, counterclaim, recoupment, defense or other right which Lessee may have against Rebuilder, Lessor, the Trustor, or any assignee of any of them or anyone else for any reason whatsoever, (ii) any defect in the title, condition, design, operating, or fitness for use of, or any damage to or loss or destruction of, the Equipment, or any interruption or cessation in the use or possession thereof by Lessee for any reason whatsoever. Lessee hereby waives, to the extent permitted by applicable law, any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender this Lease except in accordance with the express terms hereof. Each Rent payment made by Lessee shall be final and Lessee will not seek to recover all or any part of such payment from Lessor for any reason whatsoever.

Section 24. Notices. All notices required or permitted to be delivered to any party shall be in writing, and shall be deemed to be given when delivered, or when deposited in the United States mails, certified and postage prepaid as follows:

(a) If to Lessor:

First Western Bank & Trust Company
Trustee of the Western Pacific
Railroad Equipment Trust No. 1
235 Montgomery Street
San Francisco, California 94104
Attention: Edgar H. Canfield, Vice President
and Trust Officer

(b) If to Lessee:

The Western Pacific Railroad Company
Western Pacific Building
526 Mission Street
San Francisco, California 94105
Attention: F. A. Tegeler, Vice President-
Finance

Section 25. Counterparts. This Lease, and any Lease Supplement hereto, may be executed in several counterparts, each of which so executed shall be deemed to be an original and in each case such counterparts shall constitute but one and the same instrument.

Section 26. Opinion of Lessee's Counsel. Concurrently with the delivery and acceptance of the first unit of Equipment hereunder, the Lessee will deliver to the Lessor eight counterparts of the written opinion of counsel for the Lessee addressed to the Lessor, the Trustor, all Certificate Holders under the Trust Agreement, and to any assignee of Lessor of which the Lessee has notice, in scope and substance satisfactory to the Lessor, to the effect that:

(a) The Lessee is a corporation legally incorporated and validly existing, in good standing, under the laws of the State of California;

(b) The Lessee has the corporate or other power and authority to own its property and carry on its business as now being conducted and is duly qualified to do business as a foreign corporation in all states in which such qualification is necessary to carry out the terms of the Lease;

(c) This Lease, the Reconstruction Agreement and the Purchase Agreement have been duly authorized, executed and delivered by the Lessee and constitute legal, valid and binding agreements of the Lessee which are enforceable in accordance with their respective terms, subject, however, to bankruptcy, insolvency and similar laws affecting generally the rights of creditors;

(d) This Lease has been filed and recorded with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act and no other filing, recording or depositing is necessary to protect the Lessor's title to the Equipment and Trustor's residual interest therein;

(e) No approval, consent or withholding of objection is required from any public regulatory body with respect to the entering into or performance of the Purchase Agreement, this Lease, or the Reconstruction Agreement;

(f) The execution and delivery by Lessee of the Purchase Agreement, the Reconstruction Agreement, and this

Lease do not violate any provision of any law, any order of any court or governmental agency, the certificate of incorporation or by-laws of the Lessee, or any indenture, agreement, or other instrument to which Lessee is a party or by which it, or any of its property is bound, and of which such counsel has knowledge, and will not be in conflict with, result in breach of, or constitute (with due notice and/or lapse of time) a default under any such indenture, agreement, or other instrument, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of Lessee, except as contemplated and permitted hereby; and

(g) As to any other matters which Lessor shall reasonably request.

Section 27. Other Documents.

Lessee agrees to furnish to Lessor:

(a) within 120 days after the end of each fiscal year, copies, in comparative form with the preceding fiscal year of the audited balance sheet of the Lessee as of the end of such fiscal year and of the audited statements of income and retained earnings of the Lessee for such fiscal year. Such audited balance sheet and statement shall be prepared in reasonable detail and in accordance with generally accepted accounting principles (except as the same may differ because of accounting regulations for railroads prescribed by the Interstate Commerce Commission or other regulatory agency having jurisdiction.), and

(b) such other evidence (including opinions of Lessee's counsel) relating to the Lessee's execution and delivery of this Lease and other legal matters relating to Lessee's performance hereunder as Lessor or Lessor's counsel may from time to time reasonably request.

Section 28. Miscellaneous. Any provision of this Lease which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability in any jurisdiction. To the extent permitted by applicable law Lessee hereby waives any provision of law which renders any provision hereof prohibited or unenforceable in any respect. No term or provision of this Lease may be changed, waived, discharged or terminated

orally, but only by an instrument in writing signed by the party against which the enforcement of the change, waiver, discharge or termination is sought. This Lease shall constitute an agreement of lease, and nothing herein shall be construed as conveying to Lessee any right, title or interest in the Equipment except as a Lessee only. The captions in this Lease are for the convenience or reference only and shall not define or limit any of the terms or provisions hereof. This Lease shall in all respects be governed by, and construed in accordance with, the laws of California including all matters of construction, validity and performance.

IN WITNESS WHEREOF, Lessor and Lessee have caused this agreement to be duly executed as of the day and year first above written.

FIRST WESTERN BANK AND TRUST COMPANY,
as Trustee under the Western Pacific
Railroad Equipment Trust No. 1, (Lessor)

[Corporate Seal]

By _____

Its _____

Attest _____

THE WESTERN PACIFIC RAILROAD COMPANY

[Corporate Seal]

By _____
President

Attest _____

STATE OF)
COUNTY OF) SS
)

On the _____ day of _____, 19____, before me personally appeared _____, to me personally known, who being duly sworn, says that he is the _____ of the First Western Bank and Trust Company; that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument

was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[Notarial Seal]

Notary Public, County of _____
_____, State of _____

My commission: _____

STATE OF)
) SS
COUNTY OF)

On the _____ day of _____, 19____, before me personally appeared _____, to me personally known, who being duly sworn, says that he is the _____ of the Western Pacific Railroad Company; that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[Notarial Seal]

Notary Public, County of _____
_____, State of _____

My commission: _____

EXHIBIT A TO LEASE

Description of Equipment:

Two Hundred (200) railroad box cars,
reconstructed by Rebuilder under the
Reconstruction Agreement and marked
with identifying numbers 37001
through 37200 inclusive.

EXHIBIT B TO LEASE

Schedule of Casualty Value

<u>Casualty Value Payment Due on Periodic Rent Payment Date</u>	<u>Casualty Value (expressed as a Percentage of Lessor's Cost)</u>
1	99.61526
2	98.13717
3	96.31328
4	94.14091
5	91.61298
6	88.79973
7	85.74316
8	82.44137
9	78.89048
10	75.08823
11	71.06944
12	66.94969
13	62.72721
14	58.40079
15	53.96862
16	49.42942
17	44.78130
18	40.02290
19	35.15227
20	30.16797
21	25.06797
22	19.85075
23	15.00000
24 and thereafter	15.00000

EXHIBIT C

LEASE SUPPLEMENT

LEASE SUPPLEMENT, dated as of June 15, 1971, between First Western Bank and Trust Company, as Trustee of the Western Pacific Railroad Equipment Trust No. (hereinafter referred to as Lessor) and The Western Pacific Railroad Company (hereinafter referred to as Lessee).

Representations, Covenants, and Warranties

1. This Lease Supplement is issued pursuant to (and hereby incorporates all of the definitions, terms and conditions of, as if the same were fully set forth herein) that certain Railroad Equipment Lease Agreement dated as of June 15, 1971 (the Lease) between Lessor and Lessee.
2. Lessor hereby delivers and leases to Lessee under the Lease, and Lessee hereby accepts and leases from Lessor under the Lease, the following described units of Equipment:

TOTAL NO
OF UNITS

LESSEE'S IDENTIFYING
NUMBERS

3. Lessee hereby confirms to Lessor that each of the aforementioned units of Equipment has been and is marked in accordance with the provisions of Section 10 of the Lease.

IN WITNESS WHEREOF, Lessor and Lessee have caused this Lease Supplement to be duly executed on the dates appearing in their respective acknowledgments hereto but as of the date first above written.

FIRST WESTERN BANK AND TRUST COMPANY,
As Trustee, Lessor

By _____

Title: _____

(Corporate Seal)

Attest: _____

Title: _____

THE WESTERN PACIFIC RAILROAD COMPANY
Lessee

By _____

Title: _____

(Corporate Seal)

Attest: _____

Title: _____

STATE OF)
) SS
COUNTY OF)

On the _____ day of _____, 19____, before me personally appeared _____, to me personally known, who being duly sworn, says that he is the _____ of the First Western Bank and Trust Company; that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[Notarial Seal]

Notary Public, County of _____
_____, State of _____

My commission: _____

STATE OF)
) SS.
COUNTY OF)

On the _____ day of _____, 19____, before me personally appeared _____, to me personally known, who being duly sworn, says that he is the _____ of the Western Pacific Railroad Company; that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[Notarial Seal]

Notary Public, County of _____
_____, State of _____

My commission: _____

EXHIBIT D

THE WESTERN PACIFIC RAILROAD EQUIPMENT TRUST NO.

CERTIFICATE OF ACCEPTANCE

Under Railroad Equipment Lease Agreement dated as of June 15 , 1971 and Railroad Equipment Reconstruction Agreement dated as of June 15 , 1971.

The undersigned, being the duly authorized representative of First Western Bank and Trust Company, Trustee under the Equipment Trust Agreement dated as of June 15 , 1971 and designated as The Western Pacific Railroad Equipment Trust No. (the Trustee), and of The Western Pacific Railroad Company (the Lessee), and acting on their behalf as contemplated by the Railroad Equipment Reconstruction Agreement (the Reconstruction Agreement) dated as of June 15 , 1971, among Lessee, Trustee, and Pacific Car and Foundry Company (Rebuilder) and the Railroad Equipment Lease Agreement (the Lease) dated as of June 15, 1971, between Lessee and Trustee, hereby certifies that the following units of Equipment:

Description:

TOTAL NO.
OF UNITS

LESSEE'S IDENTIFYING
NUMBERS

DATE

have been duly delivered in good order by Rebuilder and duly inspected and accepted by the undersigned on the respective dates shown above on behalf of the Trustee and in turn have been duly delivered by the Trustee to the Lessee and have been duly inspected and accepted by the undersigned on said dates on behalf of the Lessee as conforming in all respects to the requirements and provisions of the Reconstruction Agreement and the Lease.

The undersigned further certifies that at the time of its delivery to the Trustee and the Lessee each unit of Equipment covered by this Certificate was properly marked on each side thereof with the legend provided in Section 1 of the Reconstruction Agreement and Section 10 of the Lease.

Dated: , 19____.

Duly authorized representative
of First Western Bank and Trust
Company,

Trustee under Equipment Trust
Agreement dated as of June 15,
1971, and of The Western Pacific
Railroad Company

EXHIBIT B:

FORM OF EQUIPMENT
TRUST CERTIFICATE PURCHASE
AGREEMENT

FOLEY & LARDNER

MILWAUKEE

EQUIPMENT TRUST CERTIFICATE
PURCHASE AGREEMENT

(WESTERN PACIFIC RAILROAD EQUIPMENT TRUST NO. 1)

THIS IS AN AGREEMENT, dated as of June 15, 1971, among FIRST WESTERN BANK AND TRUST COMPANY, (the Trustee) as Trustee under the Equipment Trust Agreement, (the Trust Agreement) dated as of the date hereof, between CROCKER-CITIZENS NATIONAL BANK, (the Trustor) and the Trustee, and the other parties who are signatory to this agreement below (the Certificate Purchasers).

R E C I T A L S

A. Concurrently herewith the Trustee and the Trustor are entering into the Trust Agreement, in the form annexed hereto as Exhibit I. (All defined terms used herein which are not otherwise defined shall have the same meanings as set forth in the Trust Agreement.) Pursuant to the terms of the Trust Agreement, the Trustee proposes to (i) purchase from THE WESTERN PACIFIC RAILROAD COMPANY (the Railroad) the 200 railroad boxcars described therein (collectively the Equipment and individually a unit of Equipment) for the purchase price of \$3,000 per unit, (ii) deliver them to PACIFIC CAR AND FOUNDRY COMPANY (Rebuilder) for reconstruction pursuant to the Reconstruction Agreement among the Railroad, the Trustee and Rebuilder for the price specified therein, and (iii) upon completion of such reconstruction lease the Equipment to the Railroad on the terms and conditions set forth in the Lease referred to and incorporated in the Trust Agreement.

B. To finance the payment of the purchase price and the reconstruction price (the combination thereof, being called herein, in the Trust Agreement and in the Lease, the Lessor's Cost of each unit of Equipment), the Trustor agrees to make payment of 20% of the Lessor's Cost, and the Trust Agreement authorizes and directs the Trustee to enter into this Equipment Trust Certificate Purchase Agreement pursuant to which the Certificate Purchasers shall purchase Equipment Trust Certificates, in the form set forth in Section 3.01 of the Trust Agreement, to finance the payment of 80% of the Lessor's Cost of each unit of Equipment, on the terms and conditions set forth herein.

C O V E N A N T S

ARTICLE I PURCHASE OF CERTIFICATES

1.01 Subject to the terms and conditions of this Agreement and the Trust Agreement, the Trustee agrees to issue and sell to the Certificate Purchasers, and the Certificate Purchasers severally agree to purchase from the Trustee, Equipment Trust Certificates on the dates and in the amounts indicated below:

<u>NAME OF CERTIFICATE PURCHASER</u>	<u>DATE</u>	<u>AMOUNT</u>
Central Life Assurance Co. (Des Moines, Iowa)	October 1, 1971	\$ 500,000
American Mutual Life Insurance Co. (Des Moines, Iowa)	October 1, 1971	300,000
State National Bank (Evanston, Illinois)	October 1, 1971	628,000
Lutheran Brotherhood (Minneapolis, Minnesota)	October 1, 1971	<u>1,000,000</u>
	TOTAL	\$2,428,000

1.02. On the date specified in Section 1.01, each Certificate Purchaser shall make available to the Trustee at its corporate trust office in San Francisco, California immediately available funds equal to 100% of the principal amount of the Certificate to be purchased by such Certificate Purchaser on such date. The Trustee shall, on such date, execute and deliver to each Certificate Purchaser a single Certificate in the principal amount indicated in Section 1.01. The Trustee shall give to each Certificate Purchaser at least five (but not more than 10) days advance written notice indicating the date on which such Certificate Purchaser is required to purchase a Certificate hereunder, and the amount thereof.

1.03 Each Certificate issued hereunder shall be in the form set forth in Section 3.01 of the Trust Agreement, with appropriate insertions indicating the principal amount, date, payee, and amount of level installment payments required thereunder. Each Certificate shall name the appropriate Certificate Purchaser as payee, or such nominee as it shall designate to the Trustee. Each of the level installment payments of principal and interest specified in each Certificate shall be in such amount as shall be required to amortize fully the principal of and interest on such Certificate in approximately equal installments. All Certificates issued hereunder shall be governed by, and shall be subject to the terms and conditions of, the Trust Agreement, as well as this Equipment Trust Certificate Purchase Agreement, and shall be secured by a security interest in the Trust Estate, as more fully provided in the Trust Agreement.

ARTICLE II CLOSING CONDITIONS

2.01 The obligation of the Certificate Purchasers to purchase Certificates hereunder shall be subject to the satisfaction of the following conditions prior to such purchase:

- (a) Each Certificate Purchaser shall receive an executed counterpart(s) of (i) the Trust Agreement; (ii) the Purchase Agreement; (iii) the Reconstruction Agreement; (iv) the Lease; and (v) this Agreement.
- (b) The Trust and the Lease shall have been duly filed with the Interstate Commerce Commission in accordance with the provisions of Section 20(c) of the Interstate Commerce Act.
- (c) The Certificate Purchasers shall have received signed copies of the following opinions, in form and substance and by counsel satisfactory to the Certificate Purchasers:

- (i) an opinion of counsel for the Lesseerequired under Section 26 of the Lease;
- (ii) an opinion of counsel for the Trustee to the effect that (A) the Trustee is a banking association duly incorporated and in good standing under the laws of the State of California; (B) the Trust Agreement has been duly authorized, executed and delivered by the Trustee, and constitutes a legal, valid and binding agreement and declaration of Trust by the Trustee which is enforceable in accordance with the terms thereof, subject, however, to bankruptcy, insolvency and similar laws affecting generally the rights of creditors; (C) the execution by the Trustee of the Trust Agreement, the Lease, the Purchase Agreement and the Reconstruction Agreement and the consummation of the transactions therein contemplated, do not conflict with or violate any provisions of the articles of association or by-laws of the Trustee, any agreement to which the Trustee is a party and of which such counsel has knowledge, or any banking laws or regulations applicable to the Trustee, and the same do not require the consent or approval of any governmental regulatory agency having jurisdiction over the Trustee with respect to such transactions; and (D) the provisions of the Certificates to be issued hereunder do not violate the usury laws of the State of California.
- (iii) an opinion of counsel for the Trustor to the effect that: (A) the Trustor is a banking association duly incorporated and in good standing under the laws of the United States; (B) the Trust Agreement has been duly authorized, executed and delivered by the Trustor and constitutes a legal, valid and binding agreement and declaration of trust by the Trustor, which is enforceable

in accordance with the terms thereof, subject, however, to bankruptcy, insolvency and similar laws affecting generally the rights of creditors; and (C) the execution of the Trust Agreement by the Trustor and the consummation of the transactions therein contemplated do not conflict with or violate any provisions of the articles of association or by-laws of the Trustor, any agreement to which the Trustor is a party and of which such counsel has knowledge, or any banking laws or regulations applicable to the Trustor, and the same do not require the consent or approval of any governmental regulatory agency having jurisdiction over the Trustor with respect to such transactions.

- (iv) an opinion of counsel for Rebuilder to the effect that: (A) Rebuilder is a corporation duly incorporated and in good standing under the laws of the State of Washington; (B) the Reconstruction Agreement has been duly authorized, executed and delivered by Rebuilder and is a legal, valid and binding agreement of Rebuilder which is enforceable in accordance with the terms thereof subject, however, to bankruptcy, insolvency and similar laws affecting generally the rights of creditors; and (C) the execution and performance of the Reconstruction Agreement by Rebuilder do not conflict with or violate any provisions of the articles of incorporation or by-laws of Rebuilder, any agreement to which Rebuilder is a party and of which such counsel has knowledge, or any law or regulation applicable to Rebuilder, and the same do not require the consent or approval of any governmental agency having jurisdiction over Rebuilder with respect to such transactions.

- (d) The Certificate Purchasers shall have received signed copies of an opinion of Messrs. Foley & Lardner, as special counsel for the Certificate Purchasers, in form and substance satisfactory to the Certificate Purchasers, to the effect that:
- (i) The Trust Agreement has been duly authorized, executed and delivered by the Trustee and the Trustor, and constitutes a legal, valid, binding agreement and declaration of trust by the Trustee and the Trustor which is enforceable in accordance with the terms thereof;
 - (ii) The Trust created and provided for by the Trust Agreement is not taxable as an association under existing statutes, regulations and decisions relating to Federal income taxes;
 - (iii) The Trustee has full right, power and authority under the Trust Agreement to enter into, execute and deliver this Agreement, the Purchase Agreement, the Reconstruction Agreement, the Lease, and the Certificates and to perform each and all of the matters provided for in such instruments;
 - (iv) This Agreement, the Purchase Agreement, the Reconstruction Agreement, and the Lease have been duly executed and delivered by the Trustee and constitute the legal, valid and binding agreements of the Trustee which are enforceable in accordance with their respective terms;
 - (v) The Lease, the Purchase Agreement and the Reconstruction Agreement have been duly authorized, executed and delivered by the Lessee

and constitute the legal, valid and binding agreements of the Lessee which are enforceable in accordance with the terms thereof;

- (vi) The Reconstruction Agreement has been duly executed and delivered by Rebuilder and constitutes the legal, valid and binding agreement of Rebuilder which is enforceable in accordance with its terms;
- (vii) The Trustee has good title to the Equipment free and clear of any liens and encumbrances and any claims of third persons, excepting only the security interest created by the Trust Agreement, and the right, title and interest of the Lessee under the Lease, and the rights of Rebuilder under the Reconstruction Agreement;
- (viii) The Lease has been duly filed with the Interstate Commerce Commission and any other filing or recording of the Lease or any notice thereof in any other public office which is necessary to protect the right, title and interest of the Trustee under the Lease has been done;
- (ix) The Trust Agreement has been duly filed with the Interstate Commerce Commission and any other filing or recording of the Trust Agreement or any notice thereof in any other public office which is necessary to perfect the security interest of the Certificate Holders as against creditors of and purchasers from the Trustee has been done; and such security interest in the units of Equipment which become subject to the Lease is effective as against creditors of and purchasers from the Trustee and the Lessee, subject only to the right, title and interest of the Lessee under the Lease and the Reconstruction Agreement, and the rights of Rebuilder under the Reconstruction Agreement, and the Trust Agreement creates a valid security interest in and to the rents and other sums due and to become due under the Lease in respect of the units of

Equipment which become subject to the Lease effective as against creditors of and purchasers from the Trustee;

- (x) The Certificates to be issued and sold pursuant to the terms hereof will, when executed and delivered by the Trustee against receipt of funds in the principal amount thereof, constitute the legal, valid and binding obligations of the Trustee which are enforceable in accordance with their terms, and are subject to the terms and entitled to the benefits of this Agreement and the Trust Agreement.
- (xi) Based on the representation and warranties set forth in Article IV hereof, Section 5(h) of the Lease, Section 11.08 of the Trust Agreement and similar representations given to such counsel by certain other parties, the offering, sale and delivery of the Certificates under the circumstances contemplated by this Agreement constitute an exempted transaction under the Securities Act of 1933, as amended, which does not require registration of the Certificates thereunder, and under the Trust Indenture Act of 1939, which does not require qualification of an indenture thereunder, and since the Certificate Purchasers are acquiring the Certificates for investment and not for resale or distribution, if any of the Certificate Purchasers should in the future deem it expedient to sell any Certificate (which the Certificate Purchasers do not now contemplate or foresee), such sale would be an exempted transaction under the Securities Act of 1933, as amended, provided that at the time of such sale such Certificate Purchaser, directly or indirectly, does not control, is not controlled by, and is not under common control with the Trustee or, if any such control then exists, such sale is not made through an underwriter

provided that in giving such opinion such special counsel may (Y) qualify all opinions with respect to the enforceability of the Certificates and any other agreements by reference to bankruptcy, insolvency and similar law affecting generally the rights of creditors; and (Z) rely on the following (but shall state that such reliance by such special counsel and the Certificate Purchasers is in their opinion reasonable): as to the opinion referred to in Section 2.01(D)(vii), on the warranties contained in the bills of sale covering the Equipment and the opinion of counsel for the Railroad required under the Purchase Agreement concerning the bills of sale to be delivered by the Railroad; and as to the opinions referred to in Section 2.01(d) hereof relating to the due authorization and execution of the Trust Agreement, the Lease, the Purchase Agreement and the Reconstruction Agreement by the respective parties thereto, on the various opinions of counsel for such parties referred to in Section 2.01(c) hereof.

- (e) All proceedings taken in connection with the transactions contemplated by this Agreement and all documents necessary to the consummation thereof shall be satisfactory in form and substance to the Certificate Purchasers and their special counsel and the Certificate Purchasers shall have received a copy (executed, xerox or certified as may be appropriate) of all documents or proceedings taken in connection with the consummation of such transactions.
- (f) The representation and warranties of the Trustee under Section 4.01 hereof, and of the Railroad under Section 5 of the Lease, shall be true as of each date of purchase of any Certificates hereunder.

ARTICLE III
USE OF PROCEEDS OF CERTIFICATES:
REDUCTION OF CERTIFICATES

3.01 The Trustee shall hold and use the proceeds received from the sale of Certificates, including income received from the investment thereof pursuant to Section 3.03 hereof (all referred to herein as the Proceeds), solely for the purposes and on the terms set forth in this Agreement. On the date specified in the Reconstruction Agreement for the payment of the reconstruction price portion of the Lessor's Cost of units of Equipment, the Trustee shall make payment to the Rebuilder of such reconstruction price portion of the Lessor's Cost out of the Proceeds, in an amount not exceeding, as to each such unit of Equipment, 80% of the Lessor's Cost thereof, provided, however, that the Trustor shall have furnished to the Trustee funds equal to not less than 20% of the total Lessor's Cost. Prior to the expenditure of the Proceeds for such purpose on such date, the Trustee shall receive, and shall promptly thereafter deliver to each of the Certificate Purchasers the following:

- (a) copies of the documents required to be delivered to the Trustee by the Railroad under the Purchase Agreement, including the bills of sale for such units, an opinion of Lessee's counsel with respect to such bills of sale, and a certificate of the Railroad currently confirming its representations and warranties under the Lease;
- (b) a xerox copy of an invoice of Rebuilder for the reconstruction of units of Equipment for which payment is then being made under the Reconstruction Agreement;
- (c) a copy of a Lease Supplement or Supplements executed by the Trustee and the Railroad pursuant to the Lease identifying the units of Equipment for which payment is then being made;
- (d) an opinion of Messrs. Foley & Lardner, as special counsel for the Certificate Purchasers, dated as of the date of such payment, to the effect that:

- (i) If such opinion is dated a later date than the opinion of such special counsel referred to in Section 2.01(d), currently confirming the matters set forth in such previous opinion.
- (ii) Each Lease Supplement referred to in paragraph (c) above has been duly authorized, executed and delivered by the Trustee and the Lessee, and constitutes the legal, valid and binding agreement of such parties, as part of the Lease, which is enforceable in accordance with the terms thereof; and such Lease Supplement has been duly filed with the Interstate Commerce Commission, and any other filing or recording of such Lease Supplement or any notice thereof in any other public office which is necessary to perfect the security interest of the Certificate Holders in the units of Equipment described therein as against creditors of and purchasers from the Trustee or the Lessee has been done, and such security interest in such units of Equipment is effective as against creditors of and purchasers from the Trustee and the Lessee, subject only to the right, title and interest of the Lessee under the Lease, and subject to the qualification and reliance referred to in Section 2.01(d).

3.02 On the Closing Date (as that term is defined in paragraph 6 of the Reconstruction Agreement), or such later date as may be agreed to in writing by the Requisite Parties (determined under the provisions of the Trust Agreement), the Trustee shall pay to the holders of the Certificates (herein called the Certificate Holders) pro rata in proportion to the Certificates held by each Certificate Holder, all of the Proceeds, if any, then held by the Trustee hereunder. Such payment shall be applied by each Certificate Holder as follows: first, so much of such payment as shall be equal to the Pro Rata Share of Excess Funds (defined below) of such Certificate Holder shall be applied in payment of the unpaid principal balance of the Certificates held by such Certificate Holder, pro rata in proportion to the unpaid principal balance thereof; and second, pro rata payment of the accrued interest on the Certificates held by such Certificate Holder. For purposes hereof, Pro Rata

Share of Excess Funds of a Certificate Holder shall mean (a) the difference between the aggregate principal amounts theretofore paid to the Trustee upon the issuance of all Certificates hereunder, less the aggregate of the payments made by the Trustee out of the Proceeds pursuant to Section 3.01 hereof as of the date specified above, multiplied by (b) a fraction, the numerator of which shall be equal to the then unpaid principal balance of Certificates held by such Certificate Holder and the denominator of which shall be equal to the then unpaid principal balance of all then outstanding Certificates. In the event that a payment is made under this Section 3.02 in reduction of the principal amount of the outstanding Certificates, then the level payments thereafter due on each Certificate shall be recalculated and reduced in the manner provided in, and subject to the other terms and provisions of, Section 3.02 of the Trust Agreement.

3.03. The Trustee is hereby authorized in its discretion to invest and reinvest all Proceeds which are not currently disbursed or required for the payment of the Lessor's Cost of units of Equipment under Section 3.01 hereof, in obligations of the United States Government or agencies thereof, and/or bank certificates of deposit, in each case having a maturity of one year or less, and shall hold all such investments subject to the terms hereof and of the Trust Agreement. The Trustee will make reasonable efforts to realize a reasonable return on unused Proceeds held by it hereunder, but it shall have sole discretion in exercising its own judgment with respect to the purchase or sale of any such obligations, and shall not be liable to anyone for any acts done or omitted by it in the exercise of, or failure to exercise, such judgment, except for its own wilful misconduct or gross negligence.

ARTICLE IV REPRESENTATIONS AND WARRANTIES

4.01 The Trustee represents and warrants that as of the date hereof, and as of each date referred to in Section 3.01 hereof, unless the Trustee otherwise advises the Certificate Holders prior thereto:

- (a) To the knowledge of the Trustee, there are no actions, suits or proceedings at law or in equity or by or before any governmental instrumentality or other agency now pending against, or threatened against the Trustee which materially and adversely affect the Trust Estate under the Trust Agreement.
- (b) Neither the Trustee, nor any agent on behalf of the Trustee, has directly or indirectly offered the Certificate or the beneficial interest under the Trust, or any substantially similar securities or interest in connection with the transaction herein contemplated for sale to, or solicited any offer to require the same from, any person, except for offers made to the Trustor, the Certificate Purchasers identified herein, and not more than 15 other institutions or sophisticated individual investors of either the Certificates or interest under the Trust.

4.02. Each of the Certificate Purchasers represent that it is the present intention of such Certificate Purchaser to acquire its Certificates for its own account for investment and not with a view to distribution or resale thereof, but subject to any legal requirement that the disposition of such Certificate Purchaser's property be at all times within its control. The purchase of the Certificates hereunder shall constitute a reaffirmation of the foregoing as of each date specified in Section 1.01 hereof.

ARTICLE V MISCELLANEOUS PROVISIONS

5.01. This Agreement, the Certificates and the Trust Agreement shall be construed in accordance with and governed by the laws of the State of California.

5.02. The Certificate Purchasers and the Trustee each acknowledge that Rebuilder and the Railroad will be relying upon the provisions hereof in executing and performing

the Reconstruction Agreement, the Purchase Agreement and the Lease, as the case may be.

5.03 The execution hereof by the parties hereto shall constitute a contract between the Trustee, and the Certificate Purchasers, and this Agreement may be executed in any number of counterparts, each executed counterpart constituting an original but all together only a single agreement.

FIRST WESTERN BANK AND TRUST COMPANY

Trustee Under the Western Pacific
Railroad Equipment Trust No. 1

By _____

Attest: _____

CERTIFICATE PURCHASERS:

Central Life Assurance Co.
(Des Moines, Iowa)

By _____

Attest: _____

American Mutual Life Insurance Co.
(Des Moines, Iowa)

By _____

Attest: _____

State National Bank
(Evanston, Illinois)

By _____

Attest: _____

Lutheran Brotherhood
(Minneapolis, Minnesota)

By _____

Attest: _____

EXHIBIT C:
FORM OF RAILROAD
EQUIPMENT PURCHASE
AGREEMENT

RAILROAD EQUIPMENT PURCHASE AGREEMENT

THE WESTERN PACIFIC RAILROAD COMPANY

THIS IS AN AGREEMENT, made as of June 15, 1971 by FIRST WESTERN BANK AND TRUST COMPANY, of San Francisco, California, as Trustee under the Equipment Trust Agreement hereinafter described (the Trustee), and THE WESTERN PACIFIC RAILROAD COMPANY, a California corporation (Railroad).

1. Purchase and Sale.

Railroad will sell and deliver to Trustee, and Trustee will purchase and accept from Railroad certain railroad equipment, consisting of two hundred boxcars described in Schedule A, (hereinafter called the Equipment, or individually, unit of Equipment) for the purchase price set forth in Schedule A.

2. Delivery.

Railroad will deliver the Equipment at the Renton, Washington, plant of Pacific Car and Foundry Company, (Rebuilder), or at such other place as may be agreed upon by Railroad, Trustee, and Rebuilder. Delivery shall be made to a representative of Trustee (who may be an employee or officer of Railroad) authorized by the Trustee to accept delivery hereunder. Units of Equipment shall be delivered at the same time as deliveries are to be made under the Reconstruction Agreement (described below).

3. Documents of Sale, Delivery and Acceptance.

Delivery of each unit of Equipment hereunder shall be accompanied by the following documents:

(a) a bill or bills of sale of the Railroad, in substantially the form of Schedule B annexed hereto, transferring to Trustee all of Railroad's right, title and interest in and to such unit of Equipment, and warranting that at the time of delivery of such unit

of Equipment, Railroad had full legal title thereto, free and clear of all liens, claims or encumbrances of any nature, and full legal and equitable rights to transfer title therein to Trustee; and

(b) a written opinion of counsel for Railroad that such bill or bills of sale are valid, enforceable, and effective to transfer title to the Trustee in accordance with the terms thereof, free and clear of all claims, liens and encumbrances of any nature whatsoever.

Acceptance of delivery shall be documented by a Certificate or Certificates of Acceptance, in the form of Schedule C annexed hereto, executed by the aforementioned representative of Trustee and a representative of Rebuilder.

4. Reconstruction of Equipment

Trustee and Railroad have entered into a reconstruction contract with Rebuilder dated as of the date hereof (the Reconstruction Agreement) pursuant to which Rebuilder has agreed to reconstruct the equipment for Trustee. The parties hereto have further agreed (by a separate agreement of even date, entitled Railroad Equipment Lease Agreement and referred to herein as the Lease) that the Equipment will be leased by Trustee to Railroad upon completion of such reconstruction, all as contemplated by that certain Equipment Trust Agreement, dated as of the date hereof between the Trustee, as trustee, and CROCKER-CITIZENS NATIONAL BANK, of San Francisco, California, as Trustor.

5. Payment of Purchase Price; Rescission of Purchase and Refund of Purchase Price.

(a) The Trustee shall make payment for the Equipment (at the per unit price specified in Schedule A) in integral groups of 50 units; provided, that each unit for which payment shall be made shall have been delivered to and accepted by the Rebuilder under the Reconstruction Agreement (as evidenced by a Certificate of Rebuilder in the form of Schedule C annexed hereto); and provided further that no units shall be purchased or paid for on or after January 31, 1972. The Railroad shall give to the Trustee at least five business days written notice prior to each date that a payment of the

purchase price is requested hereunder, (unless a shorter period is consented to by the Trustee) specifying the date of payment, the number of units, and the total purchase price to become then due. The purchase price shall be paid in immediately available San Francisco funds, against delivery of the documents described in Section 3 hereof.

(b) In the event that, for any reason whatsoever (other than the Trustee's own willful refusal to carry out the express terms hereof or of the Reconstruction Agreement or the Lease after demand therefor by the Railroad) the number of units of Equipment which become Completed Units (as defined below) shall be less than the number of units purchased by the Trustee hereunder, then the purchase of the Uncompleted Units (defined below) shall be deemed cancelled and rescinded, and the Railroad shall pay to the Trustee, as a refund of the purchase price of the Uncompleted Units, in funds immediately available in San Francisco, California on the Closing Date (as that term is defined in paragraph 6 of the Reconstruction Agreement), a sum equal to the purchase price for each unit of Equipment specified in Schedule A multiplied by the number of Uncompleted Units. For purposes hereof, a Completed Unit shall be a unit of Equipment which has been, on or prior to January 31, 1972, (a) delivered in accordance with Section 2, documented in accordance with Section 3 and paid for in accordance with Section 5(a) hereof; (b) reconstructed in accordance with the Reconstruction Agreement and delivered to the Trustee in accordance with the terms thereof; and (c) accepted by the Railroad under the Lease; and the Uncompleted Units shall be a number of units equal to the difference between the number of units purchased hereunder and the number of Completed Units. Upon receipt of such refund of the purchase price of the Uncompleted Units, the Trustee shall execute and deliver to the Railroad a Bill of Sale for any Uncompleted Units, the title to which has theretofore been transferred to the Trustee, but without representations or warranties, express or implied (except against claims on such Equipment created by the Trustee or held by anyone claiming through the Trustee), or recourse of any nature to the Trustee. It is the intent and purpose of the foregoing provisions that, although the purchase price for the units may be paid in advance of reconstruction, the Trustee shall ultimately be obligated only to purchase and pay for units which become Completed Units, and it

shall have no obligation of any nature hereunder or under the Reconstruction Agreement with respect to Uncompleted Units.

THE WESTERN PACIFIC RAILROAD COMPANY

(CORPORATE SEAL)

By _____

Title: _____

ATTEST: _____

Title: _____

FIRST WESTERN BANK AND TRUST COMPANY,
Trustee under The Western Pacific
Railroad Equipment Trust No. 1

(CORPORATE SEAL)

By _____

Title: _____

ATTEST: _____

Title: _____

SCHEDULE A TO RAILROAD EQUIPMENT PURCHASE AGREEMENT

Description of Units:

200 40-ft. 50-ton Box Cars, Railroad
Car Nos. _____

Purchase Price Per Unit: \$3,000

Total Pruchase Price: \$600,000

SCHEDULE B

BILL OF SALE

THE WESTERN PACIFIC RAILROAD COMPANY (hereinafter referred to as the Seller), for and in consideration of One Dollar (\$1.00) and other valuable consideration in full payment for the railroad equipment hereinafter specified, receipt of which is hereby acknowledged, has sold, assigned, transferred and set over to First Western Bank and Trust Company, as Trustee under the Trust Agreement dated as of June 15, 1971 (hereinafter referred to as the Trustee), its successors and assigns, the following railroad equipment:

<u>Description of Units</u>	<u>Number of Units</u>	<u>Seller's Road Numbers</u>
---------------------------------	----------------------------	----------------------------------

which railroad equipment has been delivered to the Trustee pursuant to the Railroad Equipment Purchase Agreement dated as of June 15, 1971 between the Seller and the Trustee.

This Bill of Sale is executed and delivered for the purpose of confirming and evidencing the transfer of title to said railroad equipment to the Trustee at the time and place of delivery of said railroad equipment.

The Seller hereby warrants to the Trustee, its successors and assigns, that at the time of delivery of said railroad equipment to the Trustee the Seller had legal title to said railroad equipment and good and lawful right to sell the same and that title to said railroad equipment was at the time of delivery of said railroad equipment to the Trustee free of all claims, liens and encumbrances of any nature.

IN WITNESS WHEREOF, Seller has caused this instrument to be signed in its name by a duly authorized officer and its corporate seal to be hereunto affixed this ____ day of _____, 19__.

THE WESTERN PACIFIC RAILROAD COMPANY

ATTEST:

By _____
Its _____

Secretary

SCHEDULE C TO RAILROAD EQUIPMENT PURCHASE AGREEMENT

CERTIFICATE OF ACCEPTANCE

(Purchase Agreement and Reconstruction Agreement)

The undersigned acting pursuant to the terms of the Railroad Equipment Purchase Agreement (the Purchase Agreement) dated June 15, 1971, between First Western Bank and Trust Company, as trustee under the Western Pacific Railroad Equipment Trust No. 1 (the Trustee) and The Western Pacific Railroad Company (the Railroad), and the Railroad Equipment Reconstruction Agreement (the Reconstruction Agreement), dated June 15, 1971, among the Trustee, the Railroad and Pacific Car and Foundry Company (Rebuilder), hereby certify that on the dates indicated, the following railroad boxcars were delivered by Railroad and accepted by the undersigned representative of the Trustee on behalf of Trustee, pursuant to Section 2 of the Purchase Agreement, and accepted by the undersigned representative of the Trustee and Rebuilder pursuant to Section 3 of the Reconstruction Agreement:

Total Number
of Units

Railroad's Identifying
Numbers

Date

Date:

Authorized Representative of Trustee

Authorized Representative of Rebuilder

EXHIBIT D:

FORM OF
RAILROAD EQUIPMENT
RECONSTRUCTION AGREEMENT

RAILROAD EQUIPMENT RECONSTRUCTION AGREEMENT

THIS IS AN AGREEMENT made as of June 15, 1971, among PACIFIC CAR AND FOUNDRY COMPANY, a Washington corporation (Rebuilder), FIRST WESTERN BANK AND TRUST COMPANY, a banking institution organized under the laws of California, as Trustee under the Equipment Trust Agreement described below (the Trustee) and THE WESTERN PACIFIC RAILROAD COMPANY, a California corporation (the Railroad).

RECITALS:

- A. The Trustee and Railroad have entered into a Railroad Equipment Purchase Agreement, dated as of the date hereof (the Purchase Agreement) pursuant to which Trustee will purchase the 200 railroad boxcars described in Schedule 1 hereto (hereinafter referred to collectively as the Equipment, and individually as a unit of Equipment).
- B. Upon performance of this Agreement by Rebuilder, the Railroad and Trustee intend that all units of Equipment reconstructed hereunder shall be leased by Trustee to Railroad, pursuant to the Railroad Equipment Lease Agreement, dated as of the date hereof between Railroad and Trustee (the Lease).

COVENANTS

1. Reconstruction

Rebuilder agrees to reconstruct each unit of Equipment delivered to it by the Trustee hereunder, in accordance with Rebuilder's specification PC-185 dated March 27, 1970, revised March 12, 1971, as may be amended by agreement among Railroad, Rebuilder, and Trustee (the Specifications); to number and mark each unit of Equipment as specified by the Trustee; and to deliver Equipment, as and when so reconstructed and in the quantities hereinafter set forth.

The Equipment, as so reconstructed, shall conform in all respects to requirements and specifications of the United States Department of Transportation and the Interstate Commerce Commission, and all standards recommended by the Association of American Railroads, insofar as such requirements, specifications and recommended standards are applicable as of the date of delivery of the Equipment to the Railroad to railroad equipment of the character of the equipment as so reconstructed.

2. Warranty and Indemnity

Rebuilder guarantees that the Equipment will be rebuilt in accordance with the final agreed specifications and drawings, and warrants the Equipment to be free from defects in material (except as to the specialties incorporated therein not manufactured by Rebuilder) and workmanship under normal use and service, Rebuilder's obligation being limited to making good at its plant any part or parts of any unit of Equipment which shall, at any time within one year after delivery of such unit to the Trustee, be returned to Rebuilder with transportation charges prepaid and which Rebuilder's examination shall disclose to its satisfaction to have been thus defective. REBUILDER MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE. Trustee's rights under the foregoing warranty shall be its sole and exclusive remedy and the Rebuilder will have no liability for lost profits or for incidental, consequential or commercial losses. The foregoing warranty of Rebuilder is expressly in lieu of all other warranties expressed or implied and of all other obligations or liabilities on the part of Rebuilder, and Rebuilder neither assumes nor authorizes any person to assume for it any other liability in connection with the construction and delivery of the Equipment.

Except in cases of articles and materials specified by Railroad or Trustee and not manufactured by the Rebuilder, and designs, systems, processes and formulae utilized by Rebuilder in or about the construction of the Equipment, or any unit of the Equipment, as the result of specification thereof by Railroad or Trustee, the Rebuilder agrees to indemnify, protect and hold harmless Railroad and Trustee from and against any and all liability, claims, demands, costs, charges, and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against Railroad or Trustee or their assigns because of the use in or about the construction or operation of the Equipment or any unit thereof of any article, material, design, system, process or formula which infringes or is claimed to infringe upon any patent or other right, and Railroad likewise will indemnify, protect and hold harmless the Rebuilder from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Rebuilder because of the use in or about the construction or operation of the Equipment or any unit thereof of any article or material specified by Railroad or Trustee and not manufactured by the Rebuilder, or any design, system, process or formula utilized by Rebuilder in or about the construction of the Equipment or any unit of the Equipment as the result of specification

thereof by Railroad or Trustee which infringes or is claimed to infringe upon any patent or other right other than patents or other rights controlled by Rebuilder.

3. Delivery

The Equipment will be delivered to Rebuilder by Trustee at Rebuilder's plant in Renton, Washington, or at such other place as agreed upon by the Trustee, Rebuilder and Railroad. The rate of such delivery shall be as agreed upon by the Trustee, the Rebuilder and the Railroad. Upon delivery of each unit to Rebuilder, a representative of Rebuilder shall complete and execute a Certificate of Acceptance in the form of Schedule C to the Purchase Agreement, and shall deliver a signed copy thereof to the Trustee and to the Rebuilder.

Rebuilder will deliver all of the units of Equipment to the Trustee, reconstructed pursuant hereto, on or about October 1, 1971. Delivery by Rebuilder and acceptance by Trustee shall be at Rebuilder's plant in Renton, Washington, or at such other place as agreed upon by the Trustee, Rebuilder and the Railroad. Rebuilder shall proceed diligently and in good faith with reconstruction of the equipment but shall not be responsible for delays due to any of the causes described in paragraph 4.

4. Force Majeure

The schedule specified in paragraph 3 for delivery of units of Equipment shall be extended to the extent of any delay or delays suffered by Railroad or by Rebuilder, as the case may be, in the performance of this Agreement by reason of the occurrence of acts of God; acts of Government such as embargoes, priorities, and allocations; war or war conditions; riot, civil commotion or sabotage; strikes, differences with workmen and labor shortages; accidents, fire, flood, explosion, damage to plant, equipment of facilities; delays in receiving the Equipment; delays in receiving necessary materials or any other cause beyond the reasonable control of Railroad or Rebuilder, as the case may be.

5. Inspection; Acceptance; Risk of Loss; etc.

The Trustee agrees to appoint by written notice to Rebuilder and maintain an authorized representative or representatives (who shall be employee(s) of Railroad designated by it) at the place of delivery of the reconstructed Equipment, and to cause such representative(s), as and when reconstructed Equipment is tendered for delivery by Rebuilder in accordance herewith, to inspect the same and, if such reconstructed Equipment is found to be in good order, to accept delivery thereof and to execute and deliver to Rebuilder and to the Trustee a Certificate of Acceptance acknowledging delivery of the reconstructed Equipment in good order and acceptance thereof by the authorized representative of the Trustee (hereinafter called "Certificate of Acceptance of Reconstructed Units"). The execution of such a Certificate of Acceptance of Reconstructed Units and receipt by the Trustee of Rebuilder's invoice therefor (dated as of the date of the Certificate of Acceptance of Reconstructed Units) as to any unit or units of Equipment, shall be deemed to complete Rebuilder's obligation to deliver such unit or units hereunder, and from the time of their delivery to Rebuilder until execution of such Certificate of Acceptance of Reconstructed Units Rebuilder shall bear all risk and responsibility of loss of or damage to such unit or units. Rebuilder shall make available a sample unit for detailed inspection by the aforesaid representative of the Trustee prior to the completion of any other units and shall notify the Trustee, the Railroad and such representative two weeks in advance of the date when such sample unit will be available. Approval of the sample unit by the Railroad or the Trustee shall not relieve the Rebuilder from the obligation to reconstruct the units in accordance with the terms hereof and of the Specifications. Rebuilder represents and warrants that all reconstructed units delivered by Rebuilder to the Trustee hereunder shall be free and clear of all liens for work performed or materials supplied in connection with such reconstruction.

6. Payment to Rebuilder

The reconstruction price for units of Equipment reconstructed by Rebuilder hereunder shall be paid to Rebuilder by Trustee, at the price per unit specified in Schedule 1, on the Closing Date (determined as provided below). The term "Closing Date" shall mean such date as shall be fixed by the Rebuilder by written notice delivered to the Trustee and the Railroad at least five business days prior to the Closing Date designated therein, and which (i) is not earlier than October 1,

1971 nor later than January 31, 1972, (ii) occurs after the Rebuilder's completion or reconstruction of all of the units for which the Trustee is obligated to make payment under the terms of this Agreement, (iii) is at least 10 days after the Rebuilder's presentation of an invoice to the Trustee (with a copy to the Railroad) for the price of reconstruction of the units referred to in the foregoing clause (ii), together with a Certificate of Acceptance of completed units describing such units. Payments to Rebuilder shall be made in immediately available San Francisco funds at the principal corporate trust office of the Trustee in San Francisco, California. Unless Trustee shall have received written notice to the contrary from Rebuilder prior to the date of any such payment, Trustee shall arrange a bank transfer of funds paid hereunder to be available for credit to Rebuilder's account with the commercial banking division of the Trustee before 2:00 o'clock p.m. on the day of payment.

Notwithstanding any other provisions hereof, the Trustee shall in no event be obligated to make payment for reconstruction of all units in an aggregate amount exceeding \$2,435,140, including all applicable taxes and any other charges. In the event that the reconstruction price, together with such other charges, should exceed that amount as to all units, the Railroad shall (a) within five business days after the Railroad's receipt of a copy of the Rebuilder's invoice for reconstruction, designate in writing to the Trustee and the Rebuilder the car numbers of such minimum number of units of Equipment as shall be required to cause the total reconstruction price of the remaining units of Equipment to be within the maximum specified above; and (b) make payment in full to the Rebuilder on the Closing Date of the Rebuilder's invoice charges for the unit(s) so designated, exclude such unit(s) from the terms of the Lease, treat such unit(s) as Uncompleted Unit(s) for purposes of the Purchase Agreement (as defined therein) and refund to the Trustee on the Closing Date hereunder the purchase price of such Uncompleted Unit(s) in accordance with the terms of the Purchase Agreement.

In the foregoing event, the Railroad shall become directly obligated to the Rebuilder for the outstanding and unpaid charges for such designated unit(s), and Trustee shall have no further obligation with respect thereto (other than its obligations to Railroad under the Purchase Agreement with respect to Uncompleted Units).

7. Concerning the Obligations of the Parties Inter Se

It is the intention of Railroad and Trustee that Trustee shall be the absolute owner of each and every unit of Equipment paid for by the Trustee in accordance with paragraph 6 subject only to Railroad's rights, as Lessee under the Lease. Railroad and Trustee have agreed, however, that Trustee may at its option cancel or rescind the Purchase Agreement and the Lease as to any reconstructed units of Equipment not delivered to Trustee by Rebuilder hereunder for any reasons (including those specified in paragraph 4 hereof) on or before January 31, 1972. Rebuilder hereby agrees that, at the option of Trustee and without notice, Trustee shall have no liability or obligation to Rebuilder with respect to those reconstructed units of Equipment, if any, not delivered to Trustee for any reason on or before such date (regardless of when such units may have been delivered to Rebuilder for reconstruction).

Railroad agrees:

- (i) to pay Rebuilder the reconstruction price of each unit of Equipment reconstructed by Rebuilder hereunder as to which Trustee shall exercise the option described above in this paragraph 7, provided the failure to deliver such units by the date specified in paragraph 7 was due to a cause within the terms of paragraph 4; and
- (ii) to guarantee payment by Trustee to Rebuilder of all amounts due hereunder.

If delivery of Units shall be delayed beyond January 31, 1972, due to a cause within the terms of paragraph 4, Railroad will within seven days after notification by Rebuilder that Units are ready for delivery inspect and accept units.

Payments to Rebuilder by Railroad pursuant to this paragraph 7 shall be made not later than ten days after presentation to the Railroad of invoice and certificate of acceptance. Nonperformance of the obligations of Rebuilder to

Railroad or of Railroad to Rebuilder under this paragraph 7 shall not of itself entitle Railroad or Rebuilder to assert any claim, set off, or counterclaim against Trustee, nor excuse Rebuilder or Railroad from any obligation of payment or delivery to Trustee under this Reconstruction Agreement, the Purchase Agreement or the Lease.

In the event that the Railroad shall, under the terms of this Agreement, become obligated to pay the Rebuilder the reconstruction price of any unit, Railroad shall have all of the rights of the Trustee under the provisions of this Agreement with respect to such unit.

8. Taxes

Payment of any sales or use taxes payable in connection with the reconstruction of any unit of Equipment shall be the obligation of the party obligated hereunder to pay the reconstruction price of such unit of Equipment to Rebuilder (provided, however, that the foregoing shall not be construed to limit the obligation of Railroad, as Lessee under the Lease, to pay any such taxes under the terms of the Lease).

9. Notices

Any notice given by a party hereto to either or both of the other parties shall be in writing and shall be deemed to be received when delivered personally or deposited in the United States mail, certified and postage prepaid, as follows:

If to the Trustee: First Western Bank and Trust Company
Trustee under the Western Pacific
Railroad Equipment Trust No. 1
235 Montgomery Street
San Francisco, California 94104

Attn: Edgar H. Canfield, Vice
President and Trust Officer

If to Rebuilder: Pacific Car and Foundry Company
Business Center Building
Bellevue, Washington

Attn: B. C. ^{Jameson}~~Johnson~~, Vice President

If to Railroad: The Western Pacific Railroad Company
Western Pacific Building
526 Mission Street
San Francisco, California 94105

Attn: F. A. Tegeler, Vice President-
Finance

10. Modification; Waiver

No amendment, modification or alteration of this Agreement shall be effective unless in writing signed by the parties hereto. No waiver of any right, in part or in whole, arising out of any circumstance or occurrence, shall be deemed to be a waiver of any other or future right arising out of the same or any other circumstance or occurrence.

11. Successors and Assigns

As sued herein the terms Rebuilder, the Railroad and Trustee shall be deemed to include the successors and assigns of Rebuilder, the Railroad and the Trustee, provided, however, that no assignment by any party or any assignee thereof shall subject any assignee to, or relieve such party from, any of the obligations of such party hereunder. Each party hereto may conclusively assume that there has been no assignment of the other party's rights under this Agreement unless and until it shall have been notified in writing of any such assignment by such assignor.

12. Execution of Counterparts

This Agreement may be executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument.

PACIFIC CAR AND FOUNDRY COMPANY

By _____

Title _____

(Corporate Seal)

Attest _____

Title _____

FIRST WESTERN BANK AND TRUST COMPANY
Trustee under the Western Pacific
Railroad Equipment Trust No. 1

By _____

Title _____

(Corporate Seal)

Attest _____

Title _____

THE WESTERN PACIFIC RAILROAD

By _____

Title _____

(Corporate Seal)

Attest _____

Title _____

SCHEDULE 1 TO RECONSTRUCTION AGREEMENT

Description of Equipment

Two hundred (200) fifty (50) foot 70-ton capacity Steel "XM" railroad boxcars with plug doors equipped with roller bearings, to be rebuilt from 40-foot. 50-ton railroad boxcars to be selected from among The Western Pacific Railroad Company series 20801-21400.

Reconstruction Price Terms:

Base Price per unit: \$12,175.70

Calculation:

Quoted price 7/14/70	\$11,156.90
Updated cost as of 12/24/70	153.10
Provide all new roof	256.70
Future Material Escalation (maximum)	200.00
Future Labor Escalation (maximum)	400.00
	<u>\$12,175.70</u>

Material Escalation:

Rebuilder will absorb any material escalation increase exceeding \$200 per unit, and Trustee will be credited with any amount less than \$200.

The following price escalation basis will apply for Rebuilder's materials:

(a) Steel:

Mill base prices and applicable extras on actual invoiced weight basis (except structural shapes and plates on theoretical weight basis) for rolled steel products at lowest competitive price, FOB Renton at Rebuilder's plant from the producing mills of Kaiser Steel, Bethlehem Pacific Coast Steel, Oregon Steel Mills, and Columbia Geneva Steel Division of U.S. Steel, in effect January 22, 1971.

(b) Freight Rates: In effect as of January 22, 1971

Schedule 1 to Reconstruction Agreement (continued)
Page Two

(c) Pipes and Fasteners: Prices in effect as of January 22, 1971

(d) Lumber--WCLA Grades--Douglas Fir or Hemlock
Carbuilder's Moisture Content, price in effect
January 22, 1971

Paragraph	End Use	Seasoning	Price Per MBF FOB Renton
182A & B	Framing	Air Dried	\$191.50

(e) Plywood--Douglas Fir, exterior type AC Grade
\$72.00/MBF Base

Labor Escalation:

The price of each unit shall increase by \$10.00 for each 1¢ that average hourly wages increased under Rebuilder's labor contract following March 31, 1971. Rebuilder will absorb any labor increases in excess of \$400 per unit, and the Trustee will be credited, on the basis described above, to the extent that average hourly wage increases after the above date are less than 40¢ per hour.

Rebuilder's costs are subject to audit by the Trustee or the Railroad. In the event of changes in the specifications or specialty and material items, evidenced by Change Orders issued by the Railroad and approved by the Trustee, the effect of such changes on the costs of reconstruction shall be mutually agreed upon by the Rebuilder, the Railroad and the Trustee, and the reconstruction price shall be amended accordingly.

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RECORDATION NO. _____ Filed & Recorded

JUL 8 - 1971 - 3 20 PM

INTEIRSTATE COMMERCE COMMISSION

CERTIFICATE

I, Harley B. Ferrell, do hereby
certify that the attached copy of a document entitled
"Railroad Equipment Lease Agreement", dated as of June
15, 1971, has been compared by me with the original
thereof, and that the attached copy is a true and exact
copy of said original.

DATE: July 9, 1971

Harley B. Ferrell
Title Harley B. Ferrell
Notary Public, Wash., D. C.

My Commission Expires: May 14, 1972

Notarial Seal: